

VERMONT LABOR RELATIONS BOARD
2017 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) selecting between parties' last best offers in 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 check on needlessly contested 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 2017. 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 2008 through 2017. 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 slightly above average during 2017. 60 cases were filed, compared to the annual average of 58 cases over the past ten years. The Board kept pace with this caseload. The Board closed 57 cases during the year, in line with the annual average. This left 26 cases open at the end of 2017, slightly above the annual average of 25 open cases. Only four open cases are older than five months.

The following table indicates how the 57 cases were closed:

How Cases Were Closed	Number of Cases
Board decision	9
Settlement or withdrawal of case	32
Certification of union as representative	9
Decertification of union as representative	1
Appointment of Mediator or Fact-finder	3
Order holding case in abeyance	3

The number of hearing/meeting days for the Board was slightly above average in 2017. The Board scheduled 28 cases to be heard on 33 days. The number of hearing/meeting days actually held was 13 days, compared to the annual average of 12 days. The Board heard 6 cases, compared to the annual average of 9 cases. The average length of hearing time per case was 1.8 days, above the annual average of 1.3 days. In addition, the Board spent extensive time deliberating on the cases which went to hearing and on other cases where the Board was determining what action to take.

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:

	2013	2014	2015	2016	2017
Cases Filed	56	69	51	73	60
Cases Closed	44	79	46	71	57
Hearing/Meeting Days	11	10	10	13	13
Cases Heard	5	13	7	12	6

The average length of time between the filing of a case with the Board and scheduled hearing was 183 days, above the annual average of 174 days. The average time between filing and closing of a case was 167 days, slightly below the annual average of 169 days.

There have been a high number of case settlements and withdrawals during the past several years. 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.

56 percent of cases were closed by settlement or withdrawal in 2017, and 54 percent were closed by these reasons in 2016. 50 percent, 48 percent, 66 percent, 63 percent and 59 percent were so closed in 2015, 2014, 2013, 2012 and 2011, respectively. The percentage of cases closed by settlement or withdrawal during the past seven years is significantly above the average during the preceding 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

Board Chairperson Gary Karnedy resigned from the Board in November 2017. He provided exemplary service for eight years, including three years as Board Chairperson. Gary demonstrated a deep and abiding sense of fairness, strong and steady leadership, legal expertise, an unflagging sense of humor, and an unwavering commitment to the work of the Board in fostering improved labor relations. The Board unanimously elected Member Richard Park to serve as Board Chairperson until the expiration of Chairperson Karnedy's term in September

2018. Chairperson Park previously served as Board Chairperson from 2000 to 2004, and 2010 to 2014. There was one vacancy on the six-member Board at the end of 2017.

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, the Board issued publications to aid labor relations practitioners, expanded and updated its website, and conducted six days of training sessions for practitioners in 2017.

In January, the Board published the 22nd revision to its *Guide to Vermont Labor Relations Statutes* and issued Volume 33 of *Board Opinions*. 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 2016; 3) an updated alphabetical index of all Board opinions covering the period 1977 through 2016 ; 5) an updated subject index of Vermont Supreme Court public sector labor relations decisions through 2016; 6) a digest of all Vermont Supreme Court decisions on appeals of Board decisions through 2016; and 7) the *Board Rules of Practice*. Volume 33 of *Board Opinions* contains decisions issued in 2014, 2015 and 2016; copies of the 2014, 2015 and 2016 Annual Reports, a listing of unions certified and decertified by the Board during the three years, and an alphabetical index of opinions issued these years.

The Board also expanded and updated 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*, authored by Board Executive Director Timothy Noonan, a treatise providing a comprehensive treatment of statutory, case law and administrative developments impacting labor relations in the state; 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.

In December, the Board presented six days of training sessions. The first training session was on presenting unit determination and representation cases to the Board. The second and third sessions involved presenting unfair labor practice cases to the Board. The remaining three training sessions focused on dealing with difficult substantive and procedural issues that arise in discipline and other cases in administering collective bargaining contracts. Board Executive Director Timothy Noonan was trainer for the sessions. There were 120 registrants for the sessions, by far the most registrants for this series of training sessions which have been offered by the Board for many years. Labor relations practitioners have demonstrated a continuing interest in training that can assist them in preventing and resolving labor relations disputes.

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. Board Member Richard Park attended ALRA's annual conference in July in Portland, Oregon. The 2018 ALRA Conference will be in Boston in July. Board Executive Director Timothy Noonan is Arrangements Chairperson for the conference and also is on the Program Committee.

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 was elected Consortium Executive Director in 2017. The Consortium conducted a two-day training session in April 2017 at the University of Massachusetts at Amherst. Noonan was one of the coordinators for the training session. Board Members Gary Karnedy, Alan Willard, Edward Clark and Robert Greemore attended the training along with Noonan.

LEGISLATION

A bill enacted into law during the 2017 legislative session amends 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.

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:

	2013	2014	2015	2016	2017
Grievances	24	14	33	28	31
Unfair Labor Practices	18	13	6	18	9
Unit Determination / Representation	11	39	7	19	17
Miscellaneous	3	3	5	8	3

The following sections discuss in detail the work of the Board in each of these categories during 2017.

UNIT DETERMINATIONS AND REPRESENTATION ELECTIONS

Unit determination/representation case filings in 2017 were slightly above average. 17 cases were filed or reopened, compared to the annual average over the last ten years of 16 cases. 15 cases were filed under the Municipal Employee Relations Act; the remaining two cases arose from the State Employees Labor Relations Act.

13 of the 17 cases filed in 2017 were closed by the end of the year. The following table indicates how the 13 cases were closed:

How Cases Were Closed	Number of Cases
Board order certifying union as representative subsequent to election	7
Board certifying voluntary recognition by employer of union as bargaining representative	2
Board order decertifying union as representative subsequent to election	1
Dismissal by Board order based on withdrawal or settlement of case	3

The Board issued one unit determination/representation decision in 2017. The Board held in a municipal case that, if a union amends an election petition to seek to represent employees in a larger bargaining unit than requested in the original petition, the fact that the union was now seeking to represent a larger unit did not require it to provide newly executed cards supporting the union as the representative. The union was required to demonstrate a 30 percent showing of interest in the larger unit, but could rely on the cards submitted in its initial filing to meet the 30 percent threshold. *International Union of Public Employees and AFSCME Local 1369, Council 93, AFL-CIO and Town of Randolph*, 34 VLRB 84.

The Board conducted eight elections during the year, compared to the annual average over the last ten years of 6.5 elections. Seven of the elections were conducted under the Municipal Employee Relations Act; the remaining election fell under the State Employees Labor Relations Act.

Six of the elections under the Municipal Act involved employees of municipalities deciding whether to be represented by unions. Town of Bennington and City of St. Albans Police Department employees voted to replace AFSCME Council 93 as their representative with the New England Police Benevolent Association (“NEPBA”). Hardwick Police Department employees selected NEPBA as their representative to replace IBEW Local 300. Police Department, Water/Wastewater, Highway Department, and Facilities and Grounds employees of the Town of Randolph selected the International Union of Public Employees to replace AFSCME as their representative. Village and Town of Ludlow employees voted to remain represented by IBEW Local 300. Town of Warren Highway Department employees voted to no longer be represented by Teamsters Local 597.

The remaining election under the Municipal Act involved school employees. Paraprofessionals, guidance paraprofessionals, speech/language assistants, bus drivers, bus monitors, custodians, the LPN, and the receptionist employed by the Newport City School District decided to be represented by the Northeast Kingdom Elementary Staff Association. In the election conducted under the State Employees Act, the Vermont State Colleges Faculty Federation, AFT Local 3180, prevailed in an election to represent Instructors of the Community College of Vermont who met certain requirements.

GRIEVANCES

The number of grievances filed in 2017 was substantially above average. 31 grievances were filed during the year, compared to the annual average of 24.6 grievances during the last ten years.

27 grievances were filed on behalf of state employees, compared to the annual average of 20.2 such grievances. Three grievances were filed on behalf of University of Vermont employees, and one grievance was filed on behalf of state colleges employees.

19 of the state employee grievances were filed by the Vermont State Employees' Association ("VSEA"). Eight of the grievances were filed by state employees in VSEA-represented bargaining units without VSEA involvement; in five of these cases the employees represented themselves.

Grievances contesting dismissals constituted 11 of the 27 state employee grievances. Two other grievances were filed contesting denial of sick leave usage. Two appeals of classification decisions were filed. No other area was the subject of a grievance more than once.

Two University of Vermont grievances were filed on behalf of non-faculty staff, one contesting a dismissal and the other seeking mileage reimbursement. The remaining University of Vermont grievance was filed by a faculty member contesting his non-reappointment. The state colleges grievance involved adding duties to department chairpersons.

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:

	2013	2014	2015	2016	2017
State Employees	24	12	27	24	27
State Colleges Employees	0	0	3	1	1
UVM Employees	0	2	3	2	3

The Board issued six decisions on grievances arising from state employee bargaining units, compared to the annual average of 5.4 such decisions during the past ten years. The Board determined that just cause existed for the dismissal of a Department of Corrections employee. *Grievance of Alexander*, 34 VLRB 33. In another dismissal case, the Board held that just cause existed for the discharge of a state trooper. *Appeal of Vermont Troopers Association and Hatch*, 34 VLRB 89. In an earlier decision in the case, the Board denied a motion for summary judgment filed on behalf of the trooper. 34 VLRB 1.

The Board sustained two of the other grievances in decisions arising from state employee bargaining units. The Board relied on the doctrine of equitable estoppel to sustain a grievance contesting the State's rescinding of union leave for three employees. *Grievance of King, Brace and Woods*, 34 VLRB 69. The Board determined that the State violated the contract in another case by requiring an employee to use annual leave, rather than accrued sick leave, for one of the seven weeks he was absent for work due to a serious injury. *Grievance of Kelley*, 34 VLRB 181. In the remaining state employees bargaining unit grievance decision, the Board denied a motion filed by the State to dismiss a grievance as untimely filed. *Grievance of Bohannon*, 34 VLRB 65.

The Board issued two decisions in one case involving a grievance filed on behalf of a state manager excluded from a state employee bargaining unit. The Board granted a motion filed by the State to dismiss the grievance because the manager had improperly bypassed earlier steps of the grievance procedure and brought his grievance directly to the Board. *Grievance of von Turkovich*, 34 VLRB 56. The Board subsequently denied a motion filed on the behalf of the employee to enlarge the time to file an appeal of the decision to the Supreme Court. 34 VLRB 149.

The Board issued no grievance decisions involving University of Vermont employees or Vermont State Colleges employees.

UNFAIR LABOR PRACTICES

The number of unfair labor practice case filings in 2017 were well below average. Nine charges were filed, compared to the annual average of 14.1 charges. Seven charges were filed by unions against employers, one was brought by an employee against an employer, and one was filed by an employer against a union. Three of the eighteen charges involved municipalities, three concerned schools, and three involved the State.

Six of the nine charges concerned alleged unilateral changes in conditions of employment and/or refusal to bargain in good faith. The remaining three charges alleged that employers interfered with employees in exercising their rights and/or discriminated against employees for protected activities.

The Board closed 7 of the 9 unfair labor practice cases filed during the year. In addition, the Board closed six of the seven unfair labor practice cases pending at the beginning of 2017.

Eight of the thirteen closed cases were resolved pursuant to withdrawal of the charge or settlement by the parties. Two cases were closed by Board decisions concluding that unfair labor practices had been committed. Another case was closed by the Board determining that there had been no unfair labor practice. In the two remaining cases, the Board issued orders holding the case in abeyance.

The Board issued three unfair labor practice decisions in 2017, in line with the annual average over the last ten years of 2.8 such decisions. In addressing the interplay of four statutes – the Open Meeting Law, the Public Records Act, the Teachers Labor Relations Act, and the Municipal Employee Relations Act – the Board determined that negotiating sessions between school board negotiation councils and teacher organization negotiations councils are not meetings pursuant to the Open Meeting Law. *Washington Northeast Supervisory Union v. Cabot Teachers' Association and Twinfield Teachers' Association, Cabot Teachers Association and Twinfield Teachers' Association v. Washington Northeast Supervisory Union*, 34 VLRB 4.

In a decision issued under the Judiciary Employees Labor Relations Act, the Board held that the employer violated the required duty to bargain under the Act concerning a cell phone policy to the extent that it: 1) limited personal cell phone use to lunch breaks; and 2) required an employee, when making a request to the manager to have a personal cell phone out on his or her desk due to an out of the ordinary personal issue, to inform the manager of the basics of the

personal issue. *VSEA v. State of Vermont Judiciary Department (Re: Use of Personal Cell Phones)*, 34 VLRB 155.

In the remaining unfair labor practice decision, the Board declined to issue an unfair labor practice complaint where the employee alleged the employer had made defamatory statements about him. *Petlock v. Carigan and Brattleboro Police Department*, 34 VLRB 61.

MISCELLANEOUS CASES

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

APPEALS OF BOARD DECISIONS

Four decisions issued by the Board were appealed to the Vermont Supreme Court in 2017, constituting 33 percent of the total of Board decisions issued during the year. This compares to an annual average of 17 percent of Board decisions appealed over the past ten years. The Court dismissed one of the appeals as untimely filed; the remaining three appeals are pending. The Court issued no decisions involving an appeal of a Board decision in 2017.

During the past ten years, the number of Court decisions on appeals of Board decisions has been substantially reduced. There have been only 18 Court decisions during this period, compared to 32 decisions during the preceding ten years. The Board has been fully affirmed in 13 of the 18 cases, and reversed in 5 cases, an affirmance rate of 72 percent. During this period, the chance of a Board decision remaining in effect and not being reversed has been 98 percent.

Dated this 11th day of January 2018, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Timothy J. Noonan
Timothy J. Noonan, Executive Director

/s/Richard W. Park
Richard W. Park, Chairperson

/s/ James C. Kiehle
James C. Kiehle

/s/ Alan Willard
Alan Willard

/s/ Edward W. Clark Jr.
Edward W. Clark, Jr

/s/ Robert Greemore
Robert Greemore