

VERMONT LABOR RELATIONS BOARD
2021 ANNUAL REPORT

Introduction

The Vermont Labor Relations Board (“Board”) provides this annual report to outline its work in adjudicating labor disputes and in other areas. This provides a benchmark for viewing caseloads, activities and other developments from year to year. The Board also provides an update of important changes that have occurred this 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, 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 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 three parts. The first part discusses changes to the Board over the past year. The second part is a summary of general developments and activities of the Board during 2021. The third part includes a more detailed overview of the areas of Board jurisdiction. Attached to the Annual Report is an Appendix on Caseload Statistics covering the period 2012 through 2021. The Appendix provides the basis for the bulk of statistics cited in this Annual Report.

I. CHANGES FOR THE BOARD

The Board experienced two significant changes over the past year. First, its long-time Executive Director, Tim Noonan, retired after nearly forty years of dedicated service to the Board. Second, the building that housed the Board for over thirty years, 13 Baldwin Street, was sold and the Board has a new home at 6 Baldwin Street.

In June 2021, Tim Noonan retired from his position as Executive Director. Tim dedicated nearly forty years of his life serving the Board and providing training and guidance to Vermont practitioners and Labor specialists. Throughout his long tenure, Tim nurtured the Board through many changes and improvements. Tim initiated and drafted the treatise *The Evolving Vermont Labor Relations Law*, publishing its Fifth Edition before retiring. Tim maintained and updated a comprehensive database and index of Board decisions, and provided seminars for labor practitioners, employers, and human resource specialists for years. His contributions will be felt by the Board and Vermonters for many years to come. The Board hired a new Executive Director, Judith Dillon, who has extensive experience in employment litigation and provided legal counsel and advocacy to two state agencies in her career as an attorney.

In early July 2021, the Board discovered that 13 Baldwin, the building which has housed its offices and hearing room for over thirty years, was authorized for sale. Anticipating a move to a location with less space, throughout the summer and fall, Executive Director Judith Dillon, and Clerk, Melinda Moz-Knight worked with the Vermont Secretary of State, Vermont State Archives & Records Administration to update its record retention schedule and develop a plan for archiving and culling the Board files. The Board had stored at 13 Baldwin files and documents dating back to the late 1960's. Culling those files and identifying documents appropriate for archival storage required considerable time and effort. During this busy time, Board staff also packed the office and prepared for its move. Staff were assisted in this endeavor by Board members cataloguing files and other required work.

II. **GENERAL DEVELOPMENTS AND ACTIVITIES**

COVID-19 continued to influence the work of the Board this year. For the first part of 2021, the Board held all of its hearings remotely through Microsoft Teams. After Governor Scott lifted the Emergency Order in June 2021, the Board attempted to hold hearings in person in the 13 Baldwin hearing. Several in-person hearings were scheduled that ultimately settled. Only one in-person hearing took place in September 2021. During the hearing, all participants wore masks. At its October 7, 2021, Board Meeting, with the COVID-19 cases beginning to increase in Vermont due to the Delta variant, the Board decided to hold all future hearings and meetings remotely. The Board will revisit this decision as necessary.

CASELOAD PROGRESS

The number of cases filed with the Board was below average in 2021. In 2021, 50 cases were opened or reopened, compared to the annual average of 58 cases over the past ten years. The Board closed 43 cases during the year, below the annual average of 57.6 cases. There were 23 cases open at the end of 2021, the annual average of 22 open cases.

The following table indicates how the 43 cases were closed:

How Cases Were Closed	Number of Cases
Board decision	10
Settlement or withdrawal of case	19
Certification of union as representative	13
Order decertifying union as representative	1
Order appointing mediator	3

The number of hearing/meeting days for the Board was below average in 2021. The number of hearing/meeting days held in 2021 was 12 days, slightly below the annual average of 13 days. The Board heard 8 cases, in line with the annual average of 8.6 cases. The average length of hearing time per case was 1.5 days, above the annual average of 1.36 days, primarily resulting from multi-day hearings for grievances appealing dismissals from employment.

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

Performance Measures	2017	2018	2019	2020	2021
<i>Cases Filed</i>	60	54	52	63	50
<i>Cases Closed</i>	57	49	64	62	44
<i>Percentage of Cases Closed by Settlement or Withdrawal</i>	56	59	52	54	43
<i>Cases Open at End of Year</i>	26	31	19	20	24

<i>Board Hearing Days</i>	18	13	13	19	12
<i>Cases Heard</i>	6	13	10	9	8
<i>Average Days Between Case Filing and Case Closing</i>	167	170	194	181	148

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. Prior to the pandemic, the Board accomplished this through use of informal meetings and conference calls. In 2020, necessitated by the pandemic, the Board shifted to the Microsoft Teams platform. In addition, the Board has allowed the parties time to attempt to resolve these disputes informally by extending the discovery and hearing schedule. These efforts have resulted in an increase in the informal resolution of cases.

In 2021, 43 % of cases were closed by settlement or withdrawal. 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.

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 more effectively. Early in 2021, the Board published the 24th revision to its *Guide to Vermont Labor Relations Statutes* and Volume 35 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 2020, 3) an updated alphabetical index of all Board opinions covering the period 1977 through 2020, 4) an updated subject index of Vermont Supreme Court public sector labor relations decisions through 2020, 5) a digest of all Vermont Supreme Court decisions on appeals of Board decisions through 2020, and 6) the *Board Rules of Practice*. Volume 35 of *Board Opinions* contains decisions issued in 2019 and 2020, copies of the 2019 and 2020 Annual Reports, a listing of unions certified and decertified by the Board during the past two years, and an alphabetical index of opinions issued during these years.

The Board presented three days of training in the spring of 2021. The first training focused on presenting unit determination and representation cases to the Board. The second session addressed the presentation of unfair labor practice cases to the Board. [use title of session] The final session presented an array of specific and difficult substantive and procedural issues that arise in discipline and other cases in administering collective bargaining contracts. The trainings were one of the last duties performed by former Executive Director Timothy Noonan before his retirement. A number of labor law attorneys, human resource specialists, union representatives, and others attended the trainings. Labor relations practitioners have demonstrated a continuing interest in trainings that can assist them in preventing and resolving labor relations disputes.

In the spring of 2021, the Board issued the 5th edition of *The Evolving Vermont Labor Relations Law*, authored by former Executive Director 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.

The Board regularly updates its website. The website 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.

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. ALRA presented one virtual seminar in 2021 focusing on the impact of COVID-19 on the processing of Labor Relations contested cases and the status of the labor movement generally.

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. The Consortium held a virtual training in March 2021.

The new Executive Director is a Board member of the Vermont Bar Association. She also chairs the Workforce Development Committee which seeks to address the demographic and other challenges to the legal profession and the provision of legal services to Vermonters. She managed the Committee in the investigation and publication of a Report outlining recommendations and action items and leads the team implementing a multi-prong approach to recruit and retain lawyers to Vermont and its underserved communities.

LEGISLATION

On January 1, 2021, a bill enacted into law during the 2020 legislative session went into effect amending the unit determination and election provisions of the State Employees Labor Relations Act and the Municipal Employee Relations 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.

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:

	2017	2018	2019	2020	2021
Grievances	31	27	22	34	22
Unfair Labor Practices	9	16	12	12	8
Unit Determination / Representation	17	8	16	13	16
Miscellaneous	3	3	2	4	4

The following sections discuss in detail the work of the Board in each of these categories during 2021.

GRIEVANCES

In 2021, 22 grievances were filed or reopened, compared to the annual average of 25 grievances during the last ten years. A total of 14 grievances were filed on behalf of state employees, compared to the annual average of 21 such grievances. Two grievances were filed on behalf of judicial employees. One State Colleges employee grievance was filed, and four grievances were filed on behalf of University of Vermont employees.

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:

	2016	2017	2018	2019	2020	2021
State Employees	24	27	24	16	26	14
State Colleges Employees	1	1	2	3	3	1
UVM Employees	2	3	1	1	3	4
Judiciary Employees				2	2	2

The Board issued five decisions on grievances arising from state employee bargaining units, close to the annual average of 5.61 such decisions during the past ten years. The Board dismissed two grievances filed by Department of Corrections employees. The Board found the DOC had just cause to dismiss a Correctional Facility Shift Supervisor I because of his gross misconduct, violation of the sexual harassment policy and DOC work rules. 36 VLRB 86 (2021). The Board found just cause for the demotion of a Correctional Facility Shift Supervisor to a Correctional Officer I, where he engaged in multiple instances of disparaging, undermining, and disrespecting other supervisors and management, and failed to take any action when other staff engaged in such behavior. 36 VLRB 63 (2021).

The Board ruled that just cause did not exist for the termination of the District Director of the Newport office of the Family Services Division of the Department of Children and Families in, 36 VLRB 24 (2001). The Board reduced the dismissal to a fifteen-day suspension and awarded the employee back pay and benefits for the period after his suspension. The employer State of Vermont

appealed the decision and the Vermont Supreme Court reversed and remanded the decision to the Board to provide findings that can support its Conclusions and Order. 2021 VT 82, ¶¶ 1-27.

The Board ruled in favor of the VSEA in its Grievance against the State of Vermont Department of Corrections in its failure to adhere to competitive job posting requirements of Article 19 of the Collective Bargaining Agreement. 36 VLRB 153 (2021). The State has moved to amend the decision and it is under consideration by the Board.

The Board dismissed a Grievance filed by a VSC professor, ruling the VSC did not act in an arbitrary or capricious manner when it failed to waive the Conflict of Interest Policy and allow his son to attend and receive credit in the Physics class Grievant taught. 35 VLRB 141 (2021).

There was an increase in the time between the filing of briefs and issuing of a decision. Several factors contributed to this increase, three of the Grievances involved terminations and multiple hearing dates, the transition and training of the new Executive Director, the increase in the number of elections and the prioritization of those cases, and the time dedicated to the move.

UNFAIR LABOR PRACTICES

Unfair labor practice case filings were below average in 2021. Eight charges were filed, compared to the annual average of 12.5 charges. Six of the charges were filed by unions against employers; one was filed by an employer against a union, and one was filed by an employee against a union. Three of the charges involved municipalities, one involved the Judiciary, and one involved the University of Vermont. Three of the charges were withdrawn.

The Board issued 1 unfair labor practice decision in 2021, compared to the annual average over the last ten years of 3.3 decisions.

UNIT DETERMINATIONS AND REPRESENTATION ELECTIONS

In 2021, Legislative amendments to the state and municipal unit determination statutes went into effect that influenced the flow of work generally, and the processing of petitions for collective bargaining petitions specifically. The legislative amendments added strict timelines that prioritized the processing of these cases. In 2021, 16 unit determination/representation cases were filed. Although this matches the ten-year average of 16 per year, because of the lower number of total cases filed in 2021, it represents a larger share of the total cases filed. These

cases represent 32% of the cases filed in 2021. Thirteen cases were filed under the Municipal Employee Relations Act and the remaining three cases were filed under the State Employees Labor Relations Act.

The Board issued a total of thirteen Orders of Union Certification in 2021. The Board conducted eight elections this year, all but two were by mail-in ballots. Five of the elections were governed by the Municipal Employee Labor Relations Act. The remaining three elections were conducted under the State Employees Labor Relations Act.

In two of the elections conducted under the State Employees Labor Relations Act, UVM Staff United, AFT Vermont, AFT, AFL-CIO, prevailed in elections to form two new bargaining units at UVM. The first UVM election involved a unit comprised of full-time and regular part-time Administrative, Technical, and Specialized employees in the UVM classification system. The second election involved exempt employees at the University. The New England Police Benevolent Association filed a Petition to become the exclusive bargaining representative of the non-management employees of the State of Vermont Department of Corrections. Although there was sufficient interest to hold an election, the incumbent union, VSEA, prevailed in the election and will continue to be the exclusive bargaining representative for the unit.

Of the Petitions filed under the Municipal Employees Labor Relations Act, the International Association of Fire Fighters (“IAFF”) prevailed in two elections to represent firefighters in the Towns of Woodstock and Colchester. The road crew for the Town of Wolcott voted to be represented by the Massachusetts & Northern New England Laborers’ District Council.

Municipal police employees were the subject of six petitions. The New England Police Benevolent Association (“NEPBA”) filed a Petition to represent the Burlington Police Officers below the rank of Sergeant. The Burlington Police Officers had been self-represented as the Burlington Police Officers’ Association. NEPBA subsequently withdrew its petition. Later in the year, the Fraternal Order of Police (“FOP”) filed a Petition to represent the unit. Both the Police Officers’ Association and the City of Burlington agreed to voluntarily recognize the FOP.

The FOP filed three additional petitions to represent police officers in the City of St. Albans, and Towns of Essex and Hinesburg. The Town of Essex voluntarily recognized the FOP to represent the police staff. The Hinesburg police officers voted to be represented by the FOP. The St. Albans election will take place in 2022.

The NEPBA filed a Petition to represent the staff of the Chester Police Department. The Town challenged the inclusion of the Sergeant in the unit because it claimed the Sergeant was a supervisory position and ineligible for the unit. The Board conducted a hearing and issued a decision that the Sergeant was not a supervisory position, and therefore, was eligible to be included in the unit. *NEPBA and Town of Chester*, 36 VLRB 153 (2021).

Another union seeking to represent municipal employees filed and later withdrew a petition.

MISCELLANEOUS CASES

Four 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 Vermont State Colleges and the Vermont State Colleges Staff Federation requested assistance on three occasions to help negotiate contracts for the Northern Vermont University on-line faculty, the CCV United Faculty, and the part-time faculty. The State of Vermont Department of Corrections and the VSEA for the Department of Corrections non-management unit also requested the appointment of a mediator.

APPEALS OF BOARD DECISIONS

In 2021, only one decision issued by the Board was appealed to the Vermont Supreme Court. *Grievance of Ryan*, 36 VLRB 24 (2001). The Vermont Supreme Court reversed and remanded the decision of the Board to review and provide findings in support of its conclusions of law and decision. *Grievance of Ryan*, 2021 VT 82, ¶¶ 1-27. No appeals of Board decisions are pending at the Court.

Dated this 6th day of January 2022, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Judith L. Dillon

Judith L. Dillon, Esq., Executive Director

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ Alan Willard

Alan Willard

/s/ Robert Greemore

Robert Greemore

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen F. Saudek

Karen F. Saudek

/s/ Roger P. Donegan

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