

VERMONT LABOR RELATIONS BOARD
2022 ANNUAL REPORT

Introduction

The Vermont Labor Relations Board provides this annual report to outline its work in adjudicating labor dispute and in other areas. This 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 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 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.

I. CHANGES TO THE BOARD

At the end of 2022, the long serving Chair of the Board, Richard Park announced that he would be retiring from the Board in 2023. Mr. Park was first appointed to the Board by Governor Howard Dean in 1995, and has been reappointed by Governor's Douglas, Shumlin, and Scott. His colleagues on the Board chose him to serve as their Chair for four two year terms from 2002-2008, then 2018-2022. During his tenure, he shepherded the Board and helped clarify and establish legal principles that guide labor and management relations today. He Chaired or

served on panels involving the panels reviewing the Grievances related to Hurricane Irene, the guided the Boar. In the past several years, he guided the Board through the challenges of COVID-19, and the shift to remote hearings, the relocation of the Board offices, and retirement of its long serving Executive Director. His fellow Board members, the Board staff thank him for his service and leadership and his contributions to labor law that have helped provide consistency and stability to employers and workers in Vermont for decades.

II. GENERAL DEVELOPMENTS AND ACTIVITIES

The Board hearing adaptations implemented during COVID-19, continued into 2022. Into the second quarter of the year, the Board continued to hold remote hearings. Board members, as well as the parties, their counsel, and witnesses appeared remotely through Microsoft Teams. After surveying the evolving practices for public hearings and meetings in the Vermont Legislature, Vermont Judiciary, and Vermont Public Service Commission, the Board decided at its April 2022, Board Meeting, to begin to hold in-person hearings. If both parties, requested remote hearings, the parties could appear remotely through Microsoft Teams. Subsequently, parties appearing before the Board continued to request to appear remotely. Board members, however, would appear in person in the hearing room at 6 Baldwin, while the parties appeared remotely. These hybrid hearings continued throughout 2022. There were no hearings held at which the parties appeared in-person. These hybrid hearings were preferred by the parties as it was more efficient for the parties, their counsel, and witnesses to appear remotely. The parties save the time and expense of travel, and their witnesses had less disruption to their days.

CASELOAD PROGRESS

In 2022, 51 new cases were filed or opened with the Board. The Board closed 47 cases during the year. The ten year average for the number of closed cases is 56. At the end of the year, there were 32 cases open. The ten year average for open cases is 24.

The following table indicates how the 43 cases were closed:

How Cases Were Closed	Number of Cases
Board decision	11
Settlement or withdrawal of case	25
Certification of union as representative	13
Order decertifying union as representative	1
Order appointing mediator	4

The number of hearing/meeting days for the Board was above average in 2020. The number of hearing/meeting days held in 2021 was 19 days, significantly above the annual average of 13 days. The Board heard 9 cases, in line with the annual average of 9 cases. The average length of hearing time per case was 1.8 days, well above the annual average of 1.3 days, primarily resulting from multi-day hearings for grievances appealing dismissals from employment. 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:

Performance Measures	2018	2019	2020	2021	2022
<i>Cases Filed</i>	54	52	63	50	51
<i>Cases Closed</i>	49	64	62	44	47
<i>Percentage of Cases Closed by Settlement or Withdrawal</i>	59	52	54	43	55%
<i>Cases Open at End of Year</i>	31	19	20	23	32
<i>Board Hearing Days</i>	13	13	19	12	17
<i>Cases Heard</i>	13	10	9	8	10
<i>Average Days Between Case Filing and Case Closing</i>	170	194	181	148	171

Over the past five years, the average length of time between the filing of a case with the Board and scheduled hearing decreased was 173. The length of time between case filing and completion in 2022, was 171, slightly lower than this five-year average. It does reflect an increase over last year. The increase over last year 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 2022, 55% of cases were resolved by settlement or withdrawal. 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 where meaningful settlement discussions were occurring. 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 2022, litigants requested transcripts of Board hearings to assist them in preparing proposed 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. In 2022, the average number of hearing days per case increased to 1.7. In 2022, the Board held 17 hearing days for 10 cases.

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. In 2023, the Board will compile its decisions and publish Volume 36 of Board *Opinions*. Volume 36 of Board *Opinions* contains decisions issued in 2021 and 2022, and copies of the 2021 and 2022 Annual Reports, a list of unions certified and decertified by the Board during the past two years, and an alphabetical index of opinions issued these years.

The Board plans on presenting trainings in the spring of 2023. The Board anticipates that the trainings will be divided into three days discussing the topics of unfair labor practice cases, grievances and hearing procedures, and unit determination and representation cases. Executive Director Judith Dillon will provide the training for these sessions continuing the tradition that began over twenty years ago. Labor relations practitioners have demonstrated a continuing interest in training that can assist them in preventing and resolving labor relations disputes.

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.

In addition to providing educational opportunities to Board members and Vermont practitioners, the Board staff is responsive to dozens of inquiries a month 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 these inquiries and provides these callers with the correct numbers at the Department of Labor, Attorney General's Office, or Lawyer Referral.

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 annual ALRA conference was held remotely in July 21, 2022, due to the COVID-19 pandemic. Several Board members and Executive Director Judith Dillon attended the conference. in Vancouver, British Columbia, but was canceled due to the pandemic.

The 2022 ALRA Conference has been scheduled to take place in Vancouver, British Columbia in July. The Executive Director and several Board members have expressed their interest in attending to network with other Labor professionals and to gain insights into new hearing platforms, evolving issues in labor law, and other emerging topics.

The Board also continued its involvement in the New England Consortium of State Labor Relations Agencies. The Executive Director has attended a training session and will be coordinating with other members to plan a virtual session to be held later in 2022.

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:

	2018	2019	2020	2021	2022
Grievances	27	22	34	22	22
Unfair Labor Practices	12	12	12	8	14
Unit Determination / Representation	16	16	13	16	11
Miscellaneous	2	2	4	4	4

The following sections discuss in detail the work of the Board in each of these categories during 2020.

UNIT DETERMINATIONS AND REPRESENTATION ELECTIONS

Eleven Unit determination/representation cases were filed in 2022. This is below the annual average over the last ten years of 15.7. All but one of the cases filed were under the Municipal Employee Relations Act. One petition was filed under the State Employees Labor Relations Act.

The Board conducted nine elections this year, all but one, all but one were by mail-in ballots. All but one of the Unit determination cases filed in 2022, resolved by the end of the year. The Board resolved four unit determination cases in 2022 that began in 2021. The following table indicates how the 14 cases were closed in 2022:

How Cases Were Closed	Number of Cases
Board order certifying union as representative subsequent to election	9
Board certification of voluntary recognition	1
Board dismissal of election petition	1
Dismissal based on settlement or withdrawal	2

The Board conducted nine elections during the year, compared to the annual average over the last ten years of 7.2 elections. All but one of the elections was conducted under the Municipal Employee Relations Act. The remaining election were conducted under the State Employees Labor Relations Act.

The Massachusetts and Northern New England Laborers’ District Council filed two election petitions on behalf of municipal road crews in Calais and Georgia. The eligible voters on the Calais road crew voted to join the Union at the end of 2022. The election in Georgia took place in early 2023.

GRIEVANCES

Twenty-two Grievances were filed in 2022. This number is slightly lower than the ten year average of 25.6. Nineteen grievances were filed on behalf on behalf of state employees, including one involving judiciary employees. This number is below the ten year annual average of 22 grievances filed on behalf of state employees. Two grievances were filed on behalf of judiciary employees, three State Colleges employee grievances were filed, and three 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:

	2017	2018	2019	2020	2021	2022
State Employees	27	24	16	26	14	18
State Colleges Employees	1	2	3	3	1	1
UVM Employees		1	1	3	4	2
Judiciary Employees			2	2	2	1

The Board found the Department of Corrections had just cause to dismiss a Probation and Parole Officer who violated DOC Work Rules and the directives of his supervisors in visiting the girlfriend and victim of one of his former parolees and engaging in a personal, profane, and inappropriate communication with her. The Board determined the state had failed to prove just cause for terminating a shift supervisor who repeatedly asked an African American subordinate whether the food he was reheating was fried chicken. did not find the DOC had proven that a Shift Supervisor had violated the Discrimination Complaint Policyvisiting unaccompanied the girlfriend and victim of one of his former clients. The Board found the Grievant’sCorrectional Facility Shift Supervisor I because of his gross misconduct, violation of the sexual harassment policy and DOC work rules in *Grievance of Nappi*, 36 VLRB 86 (2021). The Board found just cause for the demotion of a Correctional Facility Shift Supervisor to a Correctional Officer I in *Grievance of Smith*, VLRB 63 (2021). In *Smith*, the Board found that just cause existed for the disciplinary demotion of Grievant because 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.

The Board determined that just cause existed for the dismissal of a Vermont Psychiatric Care Hospital food service worker; *Grievance of Harris*, 35 VLRB 344; and the discharge of a correctional officer. *Grievance of Frank*, 35 VLRB 537. The Board found that just cause did not exist for the dismissal of a Vermont Psychiatric Care Hospital Mental Health Recovery Specialist, and ordered the reinstatement of the employee with full backpay. In a subsequent decision, the Board denied the State’s motion to amend the decision. *Grievance of Kalim*, 35 VLRB 290, 35 VLRB 328. In a fifth decision involving a dismissal, the Board concluded that the State did not prove any of the charges against a correctional officer, and ordered that she be reinstated with full backpay. *Grievance of Farnsworth*, 35 VLRB 519.

In the remaining grievance arising from state employee bargaining units, involving an appeal filed by VSEA on behalf of a state police lieutenant contesting disciplinary actions, the Board ruled on various issues arising during the discovery process prior to the Board hearing. The Board granted in part the State's motion to quash a subpoena issued to the director of the State Police, granted in part a motion by VSEA to compel discovery concerning the deposition of the director, and denied a motion by VSEA to hold the employer in contempt. *Appeal of Studin*, 35 VLRB 333.

The Board issued one decision in a case involving a non-bargaining unit state employee grievance. The Board held that just cause existed for the dismissal of a Department of Buildings and General Services manager. *Grievance of Eroncig*, 35 VLRB 430. The Board issued no grievance decisions involving Judiciary employees, Vermont State Colleges employees, or University of Vermont employees.

UNFAIR LABOR PRACTICES

Unfair labor practice case filings were slightly below average in 2020. Twelve charges were filed, compared to the annual average of 14 charges. Ten 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. Five of the 12 charges involved municipalities, five concerned schools, one involved the Judiciary, and one involved the University of Vermont.

Nine of the twelve charges concerned alleged unilateral changes in conditions of employment and/or refusal to bargain in good faith. One charge alleged that an employer interfered with employees in exercising their rights and interfered with the administration of a union. Another charge alleged the improper discontinuance of a bargaining unit position. The remaining charge alleged that a union violated its duty of fair representation.

The Board closed 8 of the 12 of the charges filed during the year. In addition, the Board closed the unfair labor practice case pending at the beginning of 2020.

Six of the closed cases were resolved pursuant to withdrawal of the charge or settlement by the parties. Two cases were closed by the Board issuing a Memorandum and Order declining to issue an unfair labor practice complaint. The Board dismissed the remaining case due to lack of progress.

The Board issued two unfair labor practice decisions in 2020, compared to the annual average over the last ten years of 3.3 decisions. The Board declined to issue unfair labor practice complaints in both cases. The Board dismissed as moot a charge filed by the Vermont State Employees' Association against the Judiciary Department, contending failure to bargain in good faith during negotiations for a collective bargaining agreement, where the parties had entered into a collective bargaining agreement after the charge was filed. *Vermont State Employees' Association v. State of Vermont*, 35 VLRB 419. In the second case, the Board dismissed a charge an association representing police department employees filed against a town. The Board held that the association had not presented sufficient factual allegations for the Board to conclude that the employer may have committed an unfair labor practice, and had prematurely raised an issue concerning employee reduction in hours that had not occurred. *New England Police Benevolent Association v. Town of Thetford*, 35 VLRB 515.

MISCELLANEOUS CASES

Unions and employers filed joint requests in four cases for the Board to appoint a mediator in negotiations impasses for successor collective bargaining agreements. The negotiation disputes involved the following parties and bargaining units: 1) VSEA and the Judiciary Department for the judiciary employees bargaining unit, 2) the State and AFSCME for the independent direct support providers bargaining unit, 3) the Vermont State Colleges and the Vermont State Colleges Staff Federation for the staff bargaining unit; and 4) United Academics and the University of Vermont for the full-time faculty bargaining unit.

APPEALS OF BOARD DECISIONS

One decision issued by the Board was appealed to the Vermont Supreme Court in 2022. That case is still pending before the Vermont Supreme Court.

During the past ten years, the number of Court decisions on appeals of Board decisions has been substantially reduced. There have been only 17 Court decisions during this period, compared to 33 decisions during the preceding ten years. The Board has been fully affirmed in 13 of the 17 cases, partially affirmed in one case, and reversed in 3 cases. During this period, the chance of a Board decision remaining in effect and not being reversed has been greater than 98 percent.

Dated this 6th day of January 2021, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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