

1976-1986

In 1976, the three-member Vermont Labor Relations Board was created to replace the State Labor Relations Board and the State Employees Labor Relations Board.¹ John Burgess of Brattleboro was elected Board Chairman by the other two members, William Kemsley of Bellows Falls and James Wallace of Bennington. The Board adopted the rules of the two former boards as its own Rules of Practice.²

The newly-established Board was faced with a heavy caseload of over 40 cases, caused in part by a lapse of several weeks between the effective date of the board's creation and its actual functioning. Also, parties began resorting to the Board more frequently to resolve their disputes. During the period July 1976 to June 1977, 67 cases were filed with the Board. 18 petitions for election of collective bargaining representative, 36 grievances and 13 unfair labor practice charges were filed.³

The Board struggled to keep abreast of its caseload. Kimberly Cheney was appointed to the Board in May 1978, and he was elected Board Chairman. At the time he became Chairman, 64 cases were awaiting action. In some instances, over a year had passed since the case had been heard and Board decisions had not yet been issued. In the first eight months of Cheney's tenure, 62 of the 64 cases had been decided. Also, 28 of 42 cases which had been filed since Cheney became Chairman were closed.⁴ The 1977-1978 Annual Report of the Board stated:

In the belief that the prompt resolution of labor disputes promotes good labor relations, the Board and the staff have worked diligently to hold hearings and render decisions on cases as promptly as possible. The average time between the date of receipt of briefs of the parties and the filing date of opinions has been 31 days and in only one case to date has this time period exceeded 60 days.

¹ Act No. 152 (1975 Adj. Sess.).

² 1976-1977 Annual Report, Vermont Labor Relations Board.

³ Id.

⁴ 1977-1978 Annual Report, Vermont Labor Relations Board.

The increased efficiency with which the Board has been able to handle cases is due in large measure to the fact that the Board now has its own independent office in Montpelier which is ably administered by a full-time clerk. The Board itself meets approximately three times a month and holds hearings on approximately five to six cases per month.

The hiring of the Board Clerk, Martha Farmer, was the first time the Board had a full-time employee. The “independent office” in Montpelier referenced in the report reflected the Board renting office space in the Tavern Hotel in Montpelier. In 1979, the Board relocated to a recently purchased state-owned house at 13 Baldwin Street in Montpelier. The Board has remained at the Baldwin street location from then to the present.

In December 1978, the Board issued new Rules of Practice, replacing the two different sets of rules under which it was operating.⁵ The Board also began the practice of self-publishing volumes of Board Opinions, a practice which has continued to the present. Volume 1 of Board Opinions, covering 1977 and 1978 Opinions, was dedicated to long-serving Board Member William Kemsley. Kemsley’s experience in labor relations dated back to the inception of the United Auto Workers in the 1930’s. He would continue to serve on the Board until 1990. The dedication, signed by all of the Board members whom had served with him, stated:

Bill’s vision of management-employee relationships in their ideal form is as broad and sunny as the landscapes of his native Manitoba. On the Board since 1967, Bill provides the people of Vermont with a richness of experience, a deep sense of justice, unfailing patience and unflagging good humor.

Bill, we salute you as a servant of the people and a wise friend of those who labor. Your dedication has been an inspiration to those who have worked with you in this and many other fields.

⁵ Vermont Labor Relations Board Rules of Practice, effective December 9, 1978.

1979 began a period of significant increases in the Board caseload. There was a 33 percent increase in cases filed that year over 1978 as 96 cases were filed. The Board concluded: “This growth indicates both that employees subject to Board jurisdiction appear to be increasingly aware of their right to challenge management practices, and have come to expect prompt, reasoned and clear resolutions of the issues raised.”⁶ Much of the increase was driven by the number of grievances filed with the Board under the State Employees Labor Relations Act. A total of 52 State and State Colleges employee grievances were filed in 1979, compared to 33 in 1978.⁷ The Board hired a second employee, a part-time researcher/writer, due to the significant increase in caseload in 1979.⁸ The caseload remained high in 1980 with the filing of 94 cases. However, the Board was able to reduce its backlog of cases that year by closing 112 cases.⁹

During the period 1981 to 1986, the number of cases moderated. The average annual number of cases filed during these six years was 72. This moderation was due in part to a significant reduction in the number of grievances filed by State Colleges employees. Also, the number of unfair labor practice charges filed during this period substantially decreased. Grievances represented 49 percent of case filings, unit determination/representation cases constituted 25 percent, unfair labor practice charges were 22 percent, and miscellaneous cases were responsible for the remaining 4 percent. The moderation in case filings allowed the Board to reduce the number of open cases to the lowest levels in years.¹⁰

During this period, it became evident that the Board and the Vermont Supreme Court had differing views on the role of the Board in deciding grievances filed by

⁶ 1979 Annual Report, Vermont Labor Relations Board.

⁷ Id.

⁸ Id.

⁹ 1980 Annual Report, Vermont Labor Relations Board.

¹⁰ 1981 – 1986 Annual Reports, Vermont Labor Relations Board.

dismissed state employees. The 1982 Annual Report of the Board stated that there was a “trend of significant disagreement over dismissal decisions between the Board and the Court. . . The Board has been more willing than the Court to fashion remedies for employees, particularly in misconduct cases.” This disagreement persisted for several years, and the standards for determining just cause for dismissal of employees discussed in Chapter 8 developed out of resolution of these disagreements and changes in collective bargaining agreements.

The Board reorganized its staff in 1983. Martha Farmer resigned as Clerk. She was replaced as Clerk by Jo Ellen Grearson, who had been part-time Board typist since 1980. Timothy Noonan, who had been Board Assistant since January 1981, was appointed to fill the newly created position of Executive Director. He has remained in that position to the present. The Board staff was reduced from two full-time positions and one half-time position to one full-time position and one 32 hour a week position.

A high percentage of Board decisions were appealed to the Vermont Supreme Court during this period. 46 percent of Board decisions issued from 1977 through 1986 were appealed. 48 percent of grievance decisions, 62 percent of unfair labor practice decisions, and 23 percent of unit determination/representation decisions were appealed. During the early years of this period, the Board had limited success in having decisions upheld by the Court. The Court affirmed 48 percent of decisions, and reversed 52 percent, from 1977 to mid-1982. The Board began to have more success beginning in mid-1982. The Court affirmed the Board in 70 percent of decisions from then until the end of 1989. The Court partially affirmed 12 percent of decisions and reversed 18 percent during this period.¹¹

¹¹ VLRB Decisions Appealed to Vermont Supreme Court, Report prepared by Vermont Labor Relations Board (1990).

By the end of 1984, the Board was concerned about the backlog of appeals of Board grievance decisions at the Supreme Court. 21 cases appealing Board grievance decisions were pending before the Court. The Board stated in its Annual Report: “This court backlog is becoming an increasing problem in a field where the importance of promptness in resolving disputes has long been recognized.”¹² This backlog at the Supreme Court continued to be a serious problem for several years. At the end of 1986, 17 cases appealing Board grievance decisions were pending before the Court, 90 percent of which had been pending more than a year.¹³

There was a significant amount of union organizing activities during this period. The Board conducted a total of 72 representation elections from 1979 through 1986. Unions prevailed in 68 percent of the elections. This resulted in unions becoming exclusive bargaining representatives of employees in bargaining units of State Colleges employees, municipal employees and non-teaching school employees.¹⁴

There were significant changes in the structure of the Board and its composition in 1986. Legislation supported by the Board effective July 1, 1986, increased the size of the Board from three to five members. Further, the legislation created a panel system whereby, in each case which came before the Board, the Board Chairman appointed a panel of three members to hear and decide the case. The Board believed the legislation was necessary to reduce the time between case filing and hearing and to reduce the individual members’ workloads.¹⁵

Also, the composition of the Board changed dramatically during the year. Kimberly Cheney, Chairman of the Board since 1978, resigned effective December

¹² 1984 Annual Report, Vermont Labor Relations Board.

¹³ 1986 Annual Report, Vermont Labor Relations Board.

¹⁴ 1979 – 1986 Annual Reports, Vermont Labor Relations Board.

¹⁵ Act No. 133 (1985 Adj. Sess.); 3 V.S.A. §921(a); 1986 Annual Report, Vermont Labor Relations Board.

31, 1986. Cheney's tenure saw major developments in Vermont labor law. The Board issued many significant decisions affecting collective bargaining in the state during this time. James Gilson, Board member for over five years, also resigned during 1986. Due to these resignations and expanded size of the Board, the Governor appointed three new members during the year and one in early 1987. The four new members – Catherine Frank of South Burlington, Louis Toepfer of Saxton's River, Charles McHugh of Springfield, and Dinah Yessne of St. Johnsbury – joined long-standing member William Kemsley to make up the newly constituted Board. The Board elected McHugh to be Cheney's successor as Chairman.¹⁶

¹⁶ 1986 Annual Report, Vermont Labor Relations Board.