

## 1987-1996

The newly-constituted Board revised its Rules of Practice in 1987 for the first time since 1978. The comprehensive revision came after extended Board review and discussion and a publicly-warned meeting.<sup>1</sup> The Board made a less comprehensive revision of the Rules in 1996.<sup>2</sup>

In 1987, the first full year of operation under the panel system, the Board substantially reduced its backlog of cases and the time between case filing and hearing. The Board closed 22 more cases than were opened during the year. As a result, the number of open cases at the end of 1987 was the lowest for the Board at the end of any year.<sup>3</sup> The progress continued in 1988. The average length of time between filing and hearing was 77 days, and between case opening and closing was 128 days. The Board stated:

The panel system instituted in 1986 . . . , the willingness of Board members to devote as much hearing time as necessary to reduce case backlog and a high number of settlements have combined to result in cases being heard and resolved much more quickly than at any time in the Board's existence.<sup>4</sup>

The backlog of appeals of Board decisions at the Supreme Court continued to be a serious problem. Legislation supported by the Board affecting this situation was passed in 1988. The Board was granted authority to decide whether Board orders should be stayed while a case is on appeal, with review of that determination residing in the Supreme Court.<sup>5</sup>

Another significant legislative development substantially affecting the Board occurred in 1988. The University of Vermont was placed under the coverage of the

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<sup>1</sup> 1987 Annual Report, Vermont Labor Relations Board.

<sup>2</sup> 1996 Annual Report, Vermont Labor Relations Board.

<sup>3</sup> 1987 Annual Report, Vermont Labor Relations Board.

<sup>4</sup> 1988 Annual Report, Vermont Labor Relations Board.

<sup>5</sup> 1988 and 1989 Annual Reports, Vermont Labor Relations Board.

State Employees Labor Relations Act effective July 1, 1988. As result, UVM was placed under the jurisdiction of the Board for purposes of unit determinations, representation elections, unfair labor practices, final determinations on grievances and final arbitration of contract negotiations disputes.<sup>6</sup>

However, UVM challenged the passage of the legislation in Federal district court. In November 1989, the National Labor Relations Board issued an advisory opinion indicating that UVM did not come under the jurisdiction of the NLRB. Despite the advisory opinion, UVM continued to challenge the passage of the legislation in court.<sup>7</sup> In 1990, Federal District Court Judge Albert Coffrin declined to hold that action by the Vermont General Assembly placing the University of Vermont under the coverage of the State Employees Labor Relations Act was preempted by and/or in conflict with the National Labor Relations Act or was in violation of the Supremacy Clause of the U.S. Constitution.<sup>8</sup> UVM did not appeal the decision. The Board has taken jurisdiction of UVM cases since then.<sup>9</sup>

The period 1987 to 1996 saw a significant increase in the number of union representation elections conducted by the Board. The Board conducted 133 elections during the period. The annual average of 13 elections was 44 percent higher than the annual average of 9 elections during the preceding eight years.<sup>10</sup> The period of increased election activity was ushered in by a dramatic increase in election petitions in 1989 filed by Vermont-NEA affiliates to represent non-teaching school staff. The Board conducted a record 26 elections that year, 22 among non-teaching school staff. Unions prevailed in 24 of the 26 elections.<sup>11</sup> During the 1987-1996 period, unions

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<sup>6</sup> Act No. 177 (1987 Adj. Sess.).

<sup>7</sup> 1989 Annual Report, Vermont Labor Relations Board.

<sup>8</sup> 748 F.Supp. 235 (D.Vt. 1990).

<sup>9</sup> 1990 Annual Report, Vermont Labor Relations Board.

<sup>10</sup> 1987 – 1996 Annual Reports, Vermont Labor Relations Board.

<sup>11</sup> 1989 Annual Report, Vermont Labor Relations Board.

prevailed in 88 percent of elections, a significantly higher percentage than the preceding eight years when unions gained representation rights in 68 percent of elections.<sup>12</sup> As a result of these elections, a substantially higher percentage of UVM employees, State Colleges employees, municipal employees and non-teaching school staff became represented by unions.

The overall caseload of the Board was higher during the 1987-1996 period compared to the preceding ten-year period. The annual average of cases filed was 81, seven percent higher than the annual average from 1977-1986. During this period, grievances represented 43 percent of case filings, unit determination / representation cases constituted 29 percent, unfair labor practice charges were 25 percent, and miscellaneous cases were responsible for the remaining 3 percent.<sup>13</sup>

The caseload increase also was accompanied by substantial increases in the number of Board hearing/meeting days and the average length of cases. Despite the substantial increase in the Board workload, the Board was funded at levels well below that needed to handle a substantially increased workload during the July 1991 – June 1992 and July 1992 – June 1993 fiscal years. The Board explained the consequences in its 1994 Annual Report:

The result was that the Board's ability to carry out its statutory mandate to resolve labor disputes was seriously hampered. . . (T)he number of open cases and the average time to resolve cases reached unacceptably high levels. This delay adversely affected workplace morale and productivity as workplace relationships were allowed to deteriorate for longer periods. In many cases, individual employees were substantially impacted. Further, government budgets ultimately were compromised more substantially in many cases. For example, if it takes the Board twelve months, as opposed to six months, to determine that an employee was dismissed without just cause, the individual is out of work for a substantially longer period and the employer must pay a much higher back pay amount to the employee.

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<sup>12</sup> 1987-1996 Annual Reports, Vermont Labor Relations Board.

<sup>13</sup> Id.

The budgets beginning with the July 1993 – June 1994 fiscal year allowed the Board to address these problems. Given modest improvements in funding levels, the Board made substantial improvements in handling its workload despite the persistence of a substantially above average workload. The Board made significant improvements from 1993 through 1996 in closing more cases than were opened, average length of hearing time per case, average time between case filing and hearing, and average time between case filing and closing.<sup>14</sup>

There were significant improvements with respect to appeals of Board decisions during the 1990 - 1996 period. The rate of appeal of Board decisions reached unprecedented lows. 16 percent of decisions were appealed during this period. Also, the success rate of Board decisions continued to improve. The Board was affirmed in 78 percent of cases, partially affirmed in 3 percent, and reversed in 19 percent.<sup>15</sup> Also, the backlog of appeals of Board decisions at the Supreme Court was substantially reduced during this period. By early 1992, there were only four cases on appeal to the Court, the lowest number of Board cases on appeal at any time in the history of the Board. Although the number of cases on appeal would fluctuate in subsequent years, they never again would come close to approaching the inordinately high number of pending appeals in years preceding 1992.<sup>16</sup>

There were significant changes in the composition of the Board during this period. William Kemsley retired in 1990 after serving on the Board for 18 years, the longest tenure of any member in the history of the Board. The Board established the William Kemsley, Sr., Labor Library in its offices as a tribute to him. Carroll Comstock of Rutland was appointed to succeed Kemsley on the Board. Charles McHugh completed his tenure as Board Chairman in 1995. He served as Board

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<sup>14</sup> 1994 – 1996 Annual Reports, Vermont Labor Relations Board.

<sup>15</sup> 1996 Annual Report, Vermont Labor Relations Board.

<sup>16</sup> 1992 – 1996 Annual Reports, Vermont Labor Relations Board.

Chairman for nearly nine years, a term longer than any previous Board Chairman. During his tenure, the Board kept pace with a substantially increased and more complex workload despite restrained funding. Also, the rate of appeals of Board decisions reached new lows, and Board success in having decisions affirmed by the Supreme Court reached unprecedented highs.<sup>17</sup>

In 1995, Governor Dean appointed Richard Park of Williston as Board Member replacing McHugh. The Board elected Catherine Frank, a member of the Board for the previous ten years, as Board Chairperson. She became the first woman to serve as Chairperson.<sup>18</sup>

There was one change in the composition of Board staff during this period. The Board received approval for a permanent part-time Labor Relations Specialist position in 1991. Linda McIntire was hired to fill the position.<sup>19</sup>

The Board expanded its educational and research services during these years. The Board sponsored four statewide labor relations conferences between 1988 and 1996. The Board also was actively involved in the planning and preparation of several labor relations conferences and training sessions sponsored by the New England Consortium of State Labor Relations Agencies, an organization comprised of all the state labor relations agencies in New England as well as the New York State Public Employment Relations Board. The Board had been active in the Consortium since its founding in 1978.<sup>20</sup>

The Board also continued its active participation in the Association of Labor Relations Agencies (“ALRA”), an association of agencies in the United States and Canada performing similar functions as the Board. Most notably, the Board hosted

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<sup>17</sup> 1990, 1995 Annual Reports, Vermont Labor Relations Board.

<sup>18</sup> 1995 Annual Report, Vermont Labor Relations Board.

<sup>19</sup> 1991 Annual Report, Vermont Labor Relations Board.

<sup>20</sup> 1987 – 1996 Annual Reports, Vermont Labor Relations Board.

the week-long ALRA Annual Conference at the Sheraton Burlington Hotel and Conference Center in July 1991. This was the first national labor relations conference ever held in Vermont. The Board, which has belonged to ALRA since 1976, was the smallest agency to ever host the conference. A portion of the conference was open to management representatives, union representatives, members of ALRA agencies, and other labor relations neutrals. The remainder of the conference was limited to members of ALRA agencies. 300 persons attended the conference.<sup>21</sup>

The Board also produced publications to aid labor relations practitioners. It produced a newsletter for much of the period. It continued to publish annual volumes of Board opinions. Also, beginning in 1991, the Board published a *Guide to Vermont Labor Relations Statutes*. The purpose of the *Guide* is to keep practitioners before the Board fully abreast of case law precedents and changes in Vermont labor relations statutes. The *Guide* contained: 1) copies of Vermont labor relations statutes, 2) a summary of case law in major areas done by the Board Executive Director, 3) a subject index of Board decisions from 1977 to the present, 4) an updated alphabetical index of Board decisions from 1977 to the present, 5) an index of all Vermont Supreme Court public sector labor relations decisions, and 6) a digest of all Vermont Supreme Court decisions on appeals of Board decisions. Subsequent to 1991, the Board updated the *Guide* on an annual basis.<sup>22</sup>

Further, in 1996, the Board published for the first time a practice and procedure manual. The manual was intended to serve as a companion to the *Guide to Vermont Labor Relations Statutes*. It contained an extensive narrative on Board practices and procedures, the Board Rules of Practice, the provisions of the Vermont

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<sup>21</sup> 1991 Annual Report, Vermont Labor Relations Board.

<sup>22</sup> 1987 - 1996 Annual Reports, Vermont Labor Relations Board.

Rules of Civil Procedure applicable to Board proceedings, and Board forms.<sup>23</sup>  
Subsequent to 1996, the Board updated the manual several times.

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<sup>23</sup> 1996 Annual Report, Vermont Labor Relations Board.