

**VERMONT LABOR RELATIONS BOARD**  
**2014 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) providing assistance in resolving 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 deterrent to 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 2014. 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 2005 through 2014. 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 28 percent above average during 2014. 69 cases were filed, compared to the annual average of 54 cases over the past ten years. The Board closed significantly more cases than were opened during the year. 79 cases were closed in 2014, 46 percent above the annual average. This left 16 cases open at the end of 2014, well below the annual average of 24 open cases. Only six open cases are older than six months.

The following table indicates how the 79 cases were closed:

<b>How Cases Were Closed</b>	<b>Number of Cases</b>
Board decision	20
Settlement or withdrawal of case	38
Certification of union as representative	14
Non-certification of union as representative	2
Amendment of certification of union as representative	1
Appointment of Mediator or Fact-finder	3
Order of dismissal for failure to proceed	1

The number of hearing/meeting days for the Board was below average in 2014. The Board scheduled 34 cases to be heard on 22 days. The number of hearing/meeting days actually held was 10 days, compared to the annual average of 13 days. The Board heard 13 cases, compared to the annual average of 10 cases. The average length of hearing time per case was 0.5 days, below the annual average of 1.3 days.

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:

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Cases Filed</b>	55	68	47	56	69
<b>Cases Closed</b>	52	70	60	44	79
<b>Hearing/Meeting Days</b>	17	16	7	11	10
<b>Cases Heard</b>	10	13	3	5	13

The average length of time between the filing of a case with the Board and scheduled hearing was 154 days, below the annual average of 165 days. The average time between filing and closing of a case was 131 days, well below the annual average of 173 days.

The improvements in times between case opening and closing and the relatively low number of open cases over the last few years have been due primarily to the high number of case settlements and withdrawals. The percentage of cases closed by settlement or withdrawal during the past four years has been the highest in the history of the Board. 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.

48 percent of cases were closed by settlement or withdrawal in 2014, and 66 percent were closed by these reasons in 2013. 63 percent and 59 percent were so closed in 2012 and 2011 respectively. The lower percentage of cases closed by settlement or withdrawal in 2014 compared to the preceding three years does not reflect a pause in the trend of more frequent informal resolution of cases. Instead, it was due to the unusually high number of cases filed during the year which were closed through employees deciding in an election whether they wish to be represented by a union, cases which do not lend themselves to informal resolution by the parties.

The percentage of cases closed by settlement or withdrawal during the past four years is above the 55 percent average during the last ten years, and well above the 47 percent average during the years preceding the last ten 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

Governor Shumlin appointed Robert Greemore of Barre as Board Member to fill out the remainder of the term of Linda McIntire. She resigned from the Board effective January 1, 2014, with two and one-half years to serve on her six-year term, due to changing her residency to Florida. Board Members Richard Park and James Kiehle were reappointed to the Board during the year for six-year terms. Also, the Board elected Gary Karnedy to succeed Richard Park as Board Chairperson for a two-year term from September 2014 to September 2016. Park served as Board Chairperson for two successive two-year terms.

## LEGISLATION

A bill enacted into law during the 2014 legislative session relating to early care and education providers creates Vermont's seventh collective bargaining statute. The Early Care and Education Providers Labor Relations Act became effective with the Governor's signature on June 5, 2014. Early care and education providers are licensed, registered or legally exempt child care home providers. The act grants early care and education providers who have an agreement with the Vermont Department for Children and Families to accept a subsidy the right to bargain collectively with the State of Vermont through their chosen representative, pursue grievances through their representative, and to refrain from such activities. The statute provides that there shall be one statewide bargaining unit for early care and education providers. Petitions are filed with the Board for election of a collective bargaining representative. The Board enacted *Rules of Practice* applicable under the Act effective June 16, 2014. As discussed below, the Board conducted an election among the early care and education providers during the year.

## 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, in 2014 the Board conducted two series of four training sessions. In February and March, the Board conducted the first series of training sessions for practitioners. The first training session was on presenting unit determination and representation cases to the Board. The second session involved presenting unfair labor practice cases to the Board. The remaining two 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 a total of 92 registrants for the sessions.

The Board offered another series of the same four training sessions in October and November. There were a total of 80 registrants for these sessions. The training sessions generally have been offered on an annual basis and have attracted increasing numbers of participants from year to year. Labor relations practitioners have demonstrated a continuing interest in training that can assist them in preventing and resolving labor relations disputes.

Early in 2014, the Board published the 20th revision to its *Guide to Vermont Labor Relations Statutes*. 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 2013, 3) an updated alphabetical index of all Board opinions covering the period 1977 through 2013, 5) an updated subject index of Vermont Supreme Court public sector labor relations decisions through 2013, 6) a digest of all Vermont Supreme Court decisions on appeals of Board decisions through 2013, and 7) the Board *Rules of Practice*.

Also, the Board published Volume 32 of Board decisions in 2014. Volume 32 contains decisions issued in 2012 and 2013, copies of the 2012 and 2013 Annual Reports, a listing of unions certified and decertified by the Board during the two years, and an alphabetical index of opinions issued these years.

The Board continues to update and expand 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*, a 414 page treatise authored by Board Executive Director Timothy Noonan; 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.

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”), an association of impartial government agencies and private non-profit agencies in the United States and Canada responsible for administering labor relations laws or services. Noonan and Board Members Alan Willard and Edward Clark, Jr., attended ALRA’s annual conference in June in Seattle, Washington. Noonan became President of ALRA at the conclusion of the conference. He will serve as President until the conclusion of ALRA’s 2015 conference in July in Minneapolis, Minnesota. The Board hosted the ALRA Conferences in 1991 and 2008 in Burlington.

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 continues to serve as Fiscal Agent of the Consortium. The Consortium sponsored a conference in July in Portsmouth, New Hampshire, which attracted 230 participants. Noonan served on the program committee for the conference; Board Clerk Melinda Moz-Knight handled conference registration duties. Board Chairperson Richard Park; Board Members Gary Karnedy, James Kiehle, Alan Willard and Edward Clark; Noonan and Moz-Knight attended the conference.

Further, Richard Park and Gary Karnedy attended one-day arbitration conferences sponsored respectively by the Labor Arbitration Institute and the Federal Mediation and Conciliation Service.

## **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:

	2010	2011	2012	2013	2014
<b>Grievances</b>	28	20	15	25	14
<b>Unfair Labor Practices</b>	17	26	14	18	13
<b>Unit Determination / Representation</b>	8	18	16	11	39
<b>Miscellaneous</b>	2	4	2	3	3

The following sections discuss in detail the work of the Board in each of these categories during 2014.

#### UNIT DETERMINATIONS AND REPRESENTATION ELECTIONS

The number of unit determination/representation case filings was at the highest level in Board history. 39 cases were filed, compared to the annual average over the last ten years of 14 cases. 30 cases were filed under the Municipal Employee Relations Act, 8 cases were filed under the State Employees Labor Relations Act, and the remaining case arose under the newly-enacted Early Care and Education Providers Labor Relations Act.

34 of the 39 cases filed in 2014 were closed by the end of the year. In addition, the Board closed the five unit determination/representation cases pending at the beginning of 2014. The following table indicates how the 39 cases were closed:

<b>How Cases Were Closed</b>	<b>Number of Cases</b>
Board order certifying union as representative subsequent to election	14
Board order not certifying union as representative subsequent to election	2
Board Order granting unit clarification petition	2
Board order amending certification	1
Board decision dismissing election petition	10
Dismissal by Board order based on withdrawal or settlement of case	10

The Board issued six unit determination/representation decisions, involving 13 cases, in 2014. One of the decisions dismissed 8 election petitions filed by VSEA under the Municipal Employee Relations Act to represent the deputy state's attorneys, victim advocates and secretaries in State's Attorneys offices in 8 of the 14 Vermont counties. The Board held that the Municipal Act does not apply to these employees. *Vermont State Employees' Association*

*Petition for Election of Collective Bargaining Representative (Re: Chittenden County State's Attorney Employees), et al*, 33 VLRB 119.

The Board dismissed election petitions in two other cases. The Board concluded that a petition filed by the New England Police Benevolent Association ("NEPBA") to represent the sworn law enforcement officers of the Vermont Department of Fish and Wildlife, the Vermont Department of Liquor Control and the Vermont Department of Motor Vehicles was untimely filed. *New England Police Benevolent Association Petition for Election of Collective Bargaining Representative (Re: Sworn Law Enforcement Officers)*, 33 VLRB 4. In a subsequent petition filed by the NEPBA to represent the one police officer employed by the Town of Weathersfield, the Board held that the proposed unit of one employee is inappropriate and dismissed the petition. *New England Police Benevolent Association and Town of Weathersfield*, 33 VLRB 139.

The Board granted unit clarification petitions in two other decisions. The Board approved an agreement of a support staff association and a school board to add two behavioral interventionists to an existing support staff bargaining unit through a unit clarification petition. *Grand Isle Supervisory Union-NEA and Alburgh School Board*, 33 VLRB 1. The Board also granted a petition filed by a city to exclude a payroll administrator from a union-represented bargaining unit as a confidential employee. *City of Rutland and AFSCME Council 93, Local 1201*, 33 VLRB 101.

In the remaining unit determination/representation decision issued by the Board during the year, the Board denied objections by Vermont Early Educators United, AFT, to the conduct of an election conducted by the Board in which early care and education providers had voted not to be represented by the union. *Vermont Early Educators United, AFT, and State of Vermont*, 33 VLRB 142.

There were an unusually high number of union representation elections in 2014. The Board conducted 17 elections during the year, compared to the annual average over the last ten years of 7 elections. This matched the highest number of elections conducted by the Board in any year since 1989.

As discussed above, a law was enacted in the spring of 2014 providing collective bargaining rights to early care and education providers who had an agreement with the Vermont Department for Children and Families to accept a subsidy. Following enactment of the law, Vermont Early Educators United, AFT, filed an election petition to represent the providers covered by the law. The Board proceeded to conduct a mail ballot election in which the



providers decided whether they wished to be represented for exclusive bargaining purposes by Vermont Early Educators United, AFT. The Board mailed ballots on November 17 to 1,323 providers. This was the second largest number of eligible voters in any election ever conducted by the Board. The ballots were returned over the following three weeks, and were counted by the Board on December 9. The providers decided by a vote of 418 – 398 not to be represented by the union.

The Board also conducted a large election involving a petition filed by VSEA to represent administrative support, clerical, technical and specialized employees of the University of Vermont. 759 employees were eligible to vote in the election. The employees decided by a 335 – 303 vote that they did not wish to be organized into a collective bargaining unit consisting of the above-described employees.

The remaining 15 elections were conducted under the Municipal Employee Relations Act. Eight of the elections involved employees of municipalities. In four of these elections, police department employees voted to replace one union with another as their bargaining representative. As a result, police department employees in Montpelier, Barre City and Barre Town now are represented by police associations affiliated with the Fraternal Order of Police; and NEPBA now represents Bellows Falls police department employees.

In another municipal election involving police department employees, the previously unrepresented full-time police officers of the Town of Williston voted to be represented by NEPBA. Public works equipment operators of the Town of Thetford voted in an election to be represented by the International Union of Public Employees (“IUPE”). Administrative employees and clerks in the Town of Springfield decided in an election not to be represented by IUPE. The remaining election among employees of municipalities resulted from a petition filed to decertify IBEW Local 300 as the bargaining representative of Town and Village of Ludlow employees. The employees voted to continue to be represented by the union.

The other seven elections conducted under the Municipal Act were among school support staff. Vermont-NEA affiliates prevailed in all seven elections involving support staff employed at the Burlington School District, Robinson Elementary School in Starksboro, Lincoln Community School, Monkton School, South Royalton School, Manchester School, and Beeman Elementary School in New Haven.

## GRIEVANCES

The number of grievances filed in 2014 was substantially below average. 14 grievances were filed during the year, compared to the annual average of 22 grievances during the last ten years.

12 grievances were filed on behalf of state employees, compared to the annual average of 17 such grievances. Two grievances were filed on behalf of University of Vermont employees. No grievances were filed on behalf of state colleges employees. Ten of the state employee grievances were filed by the Vermont State Employees' Association ("VSEA"). The remaining two grievances were filed by state employees without VSEA involvement. Grievances contesting dismissals constituted 7 of the 12 state employee grievances. Two grievances were filed challenging the awarding of overtime work. The remaining three grievances involved a suspension/demotion, an adverse performance evaluation and a transfer.

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:

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>State Employees</b>	21	15	11	24	12
<b>State Colleges Employees</b>	6	3	1	0	0
<b>UVM Employees</b>	1	2	3	0	2

The Board issued three decisions on grievances arising from state employee bargaining units, compared to the annual average of five such decisions during the past ten years. In one case, involving a grievance filed by the VSEA on behalf of a dismissed Department of Military employee, the Board denied VSEA's discovery motion to order the State to respond to discovery and produce documents related to uniformity and consistency of discipline throughout state government and not just limited to the Military Department. In construing the disciplinary article provisions of the collective bargaining agreement, the Board held that the appointing authority or designated representative when making disciplinary decisions is obligated to consider only uniformity and consistency information in his or her own department or agency, and uniformity and consistency information is discoverable only to the extent of the particular department or agency under the direction of the appointing authority in a particular case. *Grievance of Smith*, 33 VLRB 8.

In the remaining two grievance decisions arising from the state employees bargaining unit, the Board concluded that employees had not met their burden of establishing that a classification decision of the Commissioner of Human Resources was arbitrary and capricious. *Appeal of Liese*, 33 VLRB 47. *Appeal of Lay-Sleeper*, 33 VLRB 89.

The Board issued no grievance decisions concerning employees of the State Colleges for the fifth consecutive year. The Board also made no rulings resolving grievances filed on behalf of University of Vermont employees.

### UNFAIR LABOR PRACTICES

Filings of unfair labor practice charges were below average. 13 charges were filed, compared to the annual average of 15 charges. 10 charges were filed by unions against employers, two were filed by an employee against a union, and one was filed by an employee against an employer. Six charges were filed against municipal employers, four were filed against the State, two were against a union, and one was filed against a school employer.

7 of the 13 charges concerned alleged unilateral changes in conditions of employment and/or refusal to bargain in good faith. Four cases charged employers with interference of employees in exercising their rights and/or discrimination against employees for union activities or other protected activities. In the remaining two charges, the same employee alleged that the union had violated its duty to fairly represent him and had interfered with his rights.

The Board closed 12 of the 13 unfair labor practice cases filed during the year. In addition, the Board closed all 8 unfair labor practice cases pending at the beginning of 2014. 14 of the 20 closed cases were resolved pursuant to withdrawal of the charge or settlement by the parties. Four cases were closed by Board decisions declining to issue an unfair labor practice complaint. In the two remaining closed cases, the Board issued a Memorandum and Order deferring to the grievance arbitration procedure.

The Board issued four unfair labor practice decisions in 2014, compared to the annual average over the last ten years of three such decisions. Two of the cases involved charges filed against employers. The Board dismissed a charge filed by a municipal bus driver alleging that the employer violated its duty to bargain in good faith with the union by not following the collective bargaining agreement provisions on processing grievances. The Board held that the proper avenue to address the charge that the collective bargaining agreement had been violated was through pursuing a grievance under the agreement, not through filing an unfair practice

charge. The Board further concluded that the contention made that the employer violated its duty to bargain in good faith was an allegation appropriately brought by the union representing employees, not an individual filing a charge as an employee. *Bergeron v. Chittenden County Transportation Authority*, 33 VLRB 42.

The Board dismissed a charge filed by VSEA contending that the State refused to bargain in good faith by unilaterally removing 13 Department of Finance and Management positions from the Non-Management and Supervisory Bargaining Units represented by VSEA by designating them confidential employees. The Board determined that the appropriate designation of the 13 employees can be finally determined by the Board after a hearing on pending designation disputes filed by VSEA challenging the confidential designation of the employees. *VSEA v. State of Vermont (Re: Department of Finance & Management Positions)*, 33 VLRB 32.

In the remaining two unfair labor practice decisions, the Board declined to issue unfair labor practice complaints on charges filed by the same employee against VSEA. In one case, the Board held that the employee had not presented sufficient factual allegations to demonstrate that VSEA may have violated its duty to fairly represent him in deciding not to represent him in a grievance before the Board. *Davidson v. Vermont State Employees' Association*, 33 VLRB 60. In the other case, the Board held that: 1) the removal of the employee from various union positions was wholly an internal union matter of governance which reflected a legitimate union interest and did not impair any policy imbedded in the State Employees Labor Relations Act, and 2) the employee had failed to demonstrate that the union may have retaliated against him because he was seeking to file an unfair labor practice charge. *Davidson v. Vermont State Employees' Association*, 33 VLRB 75.

#### MISCELLANEOUS CASES

Unions and employers filed joint requests in three cases for the Board to appoint a mediator or fact-finder in negotiations impasses for successor collective bargaining contracts. The Board appointed a mediator in an impasse involving the VSEA and the Judiciary Department of the State of Vermont. The Board also appointed a mediator in an impasse between the State Colleges and the State Colleges Faculty Federation, United Professions AFT Vermont, concerning negotiations for a successor agreement covering part-time faculty. The Board appointed a fact-finder in a negotiations dispute between VSEA and the State concerning a successor agreement covering the Corrections Bargaining Unit.

## APPEALS OF BOARD DECISIONS

Decisions issued by the Board involving seven cases were appealed to the Vermont Supreme Court in 2014, representing 37 percent of the total of decisions. This compares to an annual average of 18 percent of Board decisions being appealed over the past ten years. Six of the cases subject to appeal involved election petitions filed by VSEA under the Municipal Employee Relations Act which the Board consolidated for hearing and decision. The Board dismissed the election petitions in these six cases. The remaining Board decision which was appealed also involved dismissal of an election petition, a petition filed by the New England Police Benevolent Association under the State Employees Labor Relations Act.

The Court issued three decisions involving appeals of Board decisions in 2014. The Court affirmed the Board in all three cases, all of which involved appeals of Board grievance decisions. The Court affirmed a Board ruling that the State did not violate the collective bargaining contract between the State and the VSEA by failing to pay certain Waterbury State Office Complex employees double pay for work performed after August 29, 2011, following Tropical Storm Irene, and by requiring employees to use accrued annual and sick leave during this period. *Grievance of Vermont State Employees' Association, et al (Re: Tropical Storm Irene)*, 32 VLRB 274 (2013); *Affirmed*, 2014 VT 56. The Court also upheld a Board denial of a grievance filed by a University of Vermont professor contesting the ending of the professor's part-time assignment in the Department of Mathematics and Statistics. *Grievance of Aleong*, 32 VLRB 218 (2013); *Affirmed*, 2014 VT 15 . In the third case, the Court affirmed a determination by the Board majority that the State did not violate the collective bargaining contract between the State and the VSEA by providing an employee with higher assignment pay of five percent more than his regular rate of pay rather than slotting him into the step on the pay grade of the higher level job that resulted in at least a five percent increase. *Grievance of Spear*, 32 VLRB 202 (2012); *Affirmed*, 2014 VT 57.

At the end of 2014, the appeals of Board decisions in 2014 discussed above were the only appeals of Board decisions pending at the Court

There has been increasing effectiveness of Board decisions over time. During the past ten years, the number of Court decisions on appeals of Board decisions has been substantially reduced. There have been only 20 Court decisions during this period, compared to 45 decisions

during the preceding ten years. In most of these 20 decisions, the Board decision has been upheld. The Board has been fully affirmed in 17 cases, and reversed in 3 cases, an affirmance rate of 85 percent. During this period, the chance of a Board decision remaining in effect and not being reversed has been 98 percent.

Dated this 8th day of January, 2015, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Timothy J. Noonan

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Timothy J. Noonan, Executive Director

/s/ Gary F. Karnedy

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Gary F. Karnedy, Chairperson

/s/ Richard W. Park

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Richard W. Park

/s/ James C. Kiehle

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James C. Kiehle

/s/ Alan Willard

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Alan Willard

/s/ Edward W. Clark, Jr.

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Edward W. Clark, Jr

/s/ Robert Greemore

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Robert Greemore.