

VERMONT LABOR RELATIONS BOARD
2016 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 check on needlessly contested 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 2016. 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 2007 through 2016. 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 30 percent above average during 2016. 73 cases were filed or reopened, compared to the annual average of 56 cases over the past ten years. The Board kept pace with this increased caseload. The Board closed 71 cases during the year, 27 percent above the annual average. This left 23 cases open at the end of 2016, slightly below the annual average of 24 open cases. Only six open cases are older than four months.

The following table indicates how the 71 cases were closed:

How Cases Were Closed	Number of Cases
Board decision	17
Settlement or withdrawal of case	38
Certification of union as representative	7
Non-certification of union as representative	3
Appointment of Mediator or Fact-finder	3
Dismissal for failure to proceed	2
Order deferring to grievance arbitration procedure	1

The number of hearing/meeting days for the Board was slightly above average in 2016. The Board scheduled 35 cases to be heard on 36 days. The number of hearing/meeting days actually held was 13 days, compared to the annual average of 12 days. The Board heard 12 cases, compared to the annual average of 10 cases. The average length of hearing time per case was 1 day, below the annual average of 1.2 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:

	2012	2013	2014	2015	2016
Cases Filed	47	56	69	51	73
Cases Closed	60	44	79	46	71
Hearing/Meeting Days	7	11	10	10	13
Cases Heard	3	5	13	7	12

The average length of time between the filing of a case with the Board and scheduled hearing was 184 days, above the annual average of 174 days. The average time between filing and closing of a case was 150 days, well below the annual average of 171 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 six 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.

54 percent of cases were closed by settlement or withdrawal in 2016, and 50 percent were closed by these reasons in 2015. 48 percent, 66 percent, 63 percent and 59 percent were so closed in 2014, 2013, 2012 and 2011 respectively. The percentage of cases closed by settlement or withdrawal during the past six years is significantly above the average during the preceding 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 reappointed Robert Greemore to the Board during the year for a six-year term. The Board re-elected Gary Karnedy to a second term as Board Chairperson for the period September 2016 to September 2018. All members of the Board now are serving in full six-year terms, and no members are up for reappointment in 2017.

RENOVATION OF BOARD OFFICE

There was an extensive renovation of the Board office at 13 Baldwin Street in Montpelier during 2016. New flooring, plumbing and carpeting were installed. The entire interior of the building was repainted. There was reconstruction of some interior fixtures. There was foundation and paving work to eliminate water coming into the building. Some office furniture was replaced. Many materials were recycled. During the renovation from early July to late September, the Board office was relocated to the Redstone Building on Terrace Street in Montpelier.

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, the Board revised and expanded its website and conducted eight days of training sessions for practitioners during the year.

The Board developed and implemented a revised website. The Board edited and expanded the website's contents. 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*, authored by Board Executive Director Timothy Noonan, a treatise providing a comprehensive treatment of statutory, case law and administrative developments impacting labor relations in the state.; 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 2016, the Board conducted two series of four training sessions. In January and February, 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 69 registrants for the sessions.

The Board offered another series of the same four training sessions in November and December. There were 62 registrants for these sessions. The training sessions generally have been offered on an annual basis since 1999. Labor relations practitioners have demonstrated a continuing interest in training that can assist them in preventing and resolving labor relations disputes.

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"), 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. Noonan and Board Member Alan Willard attended ALRA's annual conference in July in Halifax, Nova Scotia. Noonan completed his one-year term as Immediate Past President of ALRA at the conference, and was a presenter at two sessions during the conference. 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 Consortium Fiscal Agent. The Consortium initiated planning during 2016 for a two-day training session to be offered in April 2017 at the University of Massachusetts at Amherst. Noonan is one of the coordinators for the training session.

LEGISLATION

A bill enacted into law during the 2016 legislative session amends the State Employees Labor Relations Act to require the Board to enact rules providing for the redaction of the name of a grievant, whom the Board exonerates of misconduct for which he or she was disciplined, from the version of the Board's decision that is posted on its website. In September, the Board enacted *Rules of Practice* applicable under this act.

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:

	2012	2013	2014	2015	2016
Grievances	15	24	14	33	28
Unfair Labor Practices	14	18	13	6	18
Unit Determination / Representation	16	11	39	7	19
Miscellaneous	2	3	3	5	8

The following sections discuss in detail the work of the Board in each of these categories during 2016.

UNIT DETERMINATIONS AND REPRESENTATION ELECTIONS

Unit determination/representation case filings in 2016 were above average. Nineteen cases were filed or reopened, compared to the annual average over the last ten years of 15 cases. All cases were filed under the Municipal Employee Relations Act

All 19 cases filed in 2016 were closed by the end of the year. The following table indicates how the 19 cases were closed:

How Cases Were Closed	Number of Cases
Board order certifying union as representative subsequent to election	7
Board order not certifying union as representative subsequent to election	3
Board decision dismissing election petition due to lack of jurisdiction	2
Dismissal by Board order based on withdrawal or settlement of case	7

The Board issued no unit determination/representation decisions in 2016. The Board conducted 10 elections during the year, compared to the annual average over the last ten years of 6 elections. All ten elections were conducted under the Municipal Employee Relations Act. Four of the elections involved deputy state's attorneys, victim advocates and secretaries in State's Attorney offices deciding whether they wished to be represented by the Vermont State Employees' Association. Employees in the Chittenden County and Franklin County State's Attorney Offices decided to be represented by VSEA. Employees in the Windsor County and Rutland County Offices voted to not be so represented.

Five of the other six elections under the Municipal Act involved employees of municipalities deciding whether to be represented by unions. Town of Richmond Police Department employees voted to be represented by the New England Police Benevolent Association ("NEPBA"), as did full-time dispatchers of the Town of Woodstock. Village of Woodstock police officers decided to not be represented by the NEPBA. Morristown Highway Department employees chose IBEW Local 300 as their bargaining representative. Hartford Public Works Department and Parks & Recreation Department employees voted to replace AFSCME Council 93 as their representative with the International Union of Public Employees.

The remaining election under the Municipal Act involved school employees. Instructional assistants in Poultney decided to be represented by the Poultney Teachers' Association.

GRIEVANCES

The number of grievances filed in 2016 was substantially above average. 28 grievances were filed during the year, compared to the annual average of 23 grievances during the last ten years.

24 grievances were filed on behalf of state employees, compared to the annual average of 18 such grievances. Two grievances were filed on behalf of University of Vermont employees, and one grievance was filed on behalf of state colleges employees. The remaining grievance was filed by the union representing homecare providers.

19 of the state employee grievances were filed by the Vermont State Employees' Association ("VSEA"). Two of the grievances were filed by state employees in VSEA-represented bargaining units without VSEA involvement. One grievance, filed on behalf of a

state trooper in the bargaining unit represented by the Vermont Troopers Association (“VTA”), was filed by the VTA and a private attorney. One grievance was filed by a state trooper in the VTA-represented bargaining unit without VTA involvement. The remaining state employee grievance was filed by a state manager excluded from a bargaining unit represented by a union.

Grievances contesting dismissals constituted eight of the twenty-four state employee grievances. Four other grievances were filed contesting non-payment of wages. No other area was the subject of a grievance more than once.

The two University of Vermont grievances were filed on behalf of non-faculty staff, one contesting a dismissal and the other challenging vacation time denial. The state colleges grievance involved sexual harassment charges against a faculty member. The grievance filed by the union representing homecare providers concerned not withholding deductions to a union fund.

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:

	2012	2013	2014	2015	2016
State Employees	11	24	12	27	24
State Colleges Employees	1	0	0	3	1
UVM Employees	3	0	2	3	2

The Board issued nine decisions on grievances arising from state employee bargaining units, compared to the annual average of five such decisions during the past ten years. The Board determined that just cause did not exist for the dismissal of an Agency of Transportation environmental biologist, and reduced his dismissal to a 30-day suspension. *Grievance of Lepore*, 33 VLRB 290. In a subsequent decision in the case, the Board declined to stay, pending appeal to the Supreme Court, the Board order reinstating the employee, but stayed the payment of back pay to the employee. 33 VLRB 422. The Board also sustained a grievance in another case involving an Agency of Transportation employee, concluding that the employee should have received higher assignment pay for the duties she performed in the absence of her supervisor. *Grievance of Lang*, 33 VLRB 345.

The Board dismissed the grievances in five other grievance decisions arising from state employee bargaining units. The Board determined that the State did not violate the annual leave article of the contract by the method in which employees were credited with annual leave accrual upon completion of their first six months of employment. *Grievance of VSEA (Re: Annual Leave Accruals)*, 33 VLRB 330. In two cases arising from the Vermont Veterans Home, the Board dismissed one of the grievances seeking information from the employer where the employer had provided the information to VSEA prior to the Board hearing in the case, and concluded in the other grievance that the employer had not violated the article of the contract cited by VSEA by prohibiting employees from circulating a petition during non-work time and in non-work areas. *Grievances of VSEA (Re: Vermont Veterans Home)*, 33 VLRB 435. The Board determined in another case that an Agency of Natural Resources employee had not demonstrated that his protected union and grievance activities played any part in the decision to not promote him. *Grievance of Benoit*, 33 VLRB 485. The Board dismissed a Department of Public Safety dispatch supervisor's claim in another grievance that the employer violated the collective bargaining contract and a memorandum of understanding by permitting an employee with less seniority as a supervisor to displace her from the first shift. *Grievance of Habich*, 33 VLRB 509.

In two other decisions on state employee grievances, the Board denied pre-hearing motions filed on behalf of employees. The Board denied a partial motion for summary judgment to dismiss some of the charges made against a dismissed state employee. *Grievance of Gallow*, 33 VLRB 418. The Board denied a motion to compel discovery regarding information on other unsuccessful applicants in a grievance contesting failure to promote an employee. *Grievance of Benoit*, 33 VLRB 429.

The Board issued one grievance decision involving a grievance filed by a University of Vermont employee. The Board held that the University had just cause to dismiss a 4-H Educator. *Grievance of Wilson*, 33 VLRB 385. The Board issued two pre-hearing decisions in one grievance involving a State Colleges faculty member. In the first decision, the Board denied motions to dismiss filed both by the grievant and the employer. *Grievance of Schwaner*, 16 VLRB 432. In the second decision, the Board quashed subpoenas served by the grievant seeking the mental health records of a former student the grievant was alleged to have sexually harassed. 16 VLRB 464.

UNFAIR LABOR PRACTICES

The number of unfair labor practice case filings in 2016 were above average. Eighteen charges were filed, compared to the annual average of fourteen charges. Twelve charges were filed by unions against employers, two were brought by employers against unions, three were submitted by employees against employers, and one was filed by an employee against a union. Eight of the eighteen charges involved municipalities, five concerned schools, four involved the State, and one concerned a private employer.

Eight of the eighteen charges concerned alleged unilateral changes in conditions of employment and/or refusal to bargain in good faith. Seven charges alleged that employers interfered with employees in exercising their rights and/or discriminated against employees for protected activities. In two cases, refusal to bargain in good faith and interference with protected rights were both alleged. In the remaining case, the charge was never properly amended.

The Board closed 10 of the 18 unfair labor practice cases filed during the year. In addition, the Board closed two of the three unfair labor practice cases pending at the beginning of 2016. Seven of the pending charges were filed in the last three months of the year.

Eight of the twelve closed cases were resolved pursuant to withdrawal of the charge or settlement by the parties. Two cases were closed by Board decisions declining to issue an unfair labor practice complaint. One case was closed by the Board deferring to the parties' grievance arbitration procedure. In the remaining case, the Board dismissed the case for failure to proceed with it.

The Board issued three unfair labor practice decisions in 2016, in line with the annual average over the last ten years of three such decisions. The Board determined that the contracting out of food services work by a school board was a violation of its duty to bargain in good faith. The Board ordered the school board to cease and desist from the contracting out of food services, and to reinstate the food service employees of the school district with back pay and benefits. *Arlington Staff Association/Vermont-NEA v. Arlington Board of School Directors*, 33 VLRB 471.

In the two other unfair labor practice decisions, the Board declined to issue unfair labor practice complaints and dismissed the charges. In one case, VSEA contended that the State committed an unfair labor practice by promulgating and maintaining no-solicitation policies. The Board concluded that VSEA was barred on *res judicata* grounds from prevailing on the charge

because VSEA could have had the policies' legality adjudicated by the Board by filing an earlier unfair labor practice charge along with an earlier grievance filed by VSEA on the issue. *VSEA v. State of Vermont*, 33 VLRB 457. In the other case, the Board dismissed a charge filed by a municipal transit employee alleging that the employer violated its duty to bargain in good faith with the union by improperly disciplining him in violation of collective bargaining agreement provisions. 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 employee represented by the union. *Benabe v. Green Mountain Transit*, 33 VLRB 501.

MISCELLANEOUS CASES

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

The Board also was called upon to select between the parties' last best offers in negotiations disputes between VSEA and the State concerning successor agreements covering the Non-Management Unit, the Supervisory Unit, and the Corrections Unit. The Board selected the last best offers submitted by VSEA. *VSEA and State of Vermont (Re: Non-Management, Supervisory and Corrections Units Negotiations)*, 33 VLRB 357.

The Board issued decisions in two other cases arising from the miscellaneous statutory provisions granting the Board jurisdiction in various areas. The Board dismissed as premature an appeal filed by an employer concerning the right of an employee to legislative leave since the employee had not requested a leave of absence for this purpose. *Appeal of Atlantic Plywood*

Corporation, 33 VLRB 454. The Board dismissed a petition filed by a former state police sergeant seeking removal of all references to his name from the Board website in seven decisions involving him because the statutory provisions requiring such redaction did not apply to any of the seven decisions. *Petition of Davidson*, 33 VLRB 505.

APPEALS OF BOARD DECISIONS

One decision issued by the Board was appealed to the Vermont Supreme Court in 2016, constituting 8 percent of the total of Board decisions issued during the year for which the appeal period had expired by the end of the year. This compares to an annual average of 16 percent of Board decisions appealed over the past ten years.

The Court issued three decisions involving an appeal of a Board decision in 2016. The Court reversed a Board decision concluding that the Municipal Employee Relations Act did not apply to petitions filed by VSEA to seek to represent employees of State's Attorney's Offices. The Court remanded to the Board to process the petitions filed by VSEA involving State's Attorney's Offices which employ five or more employees as defined by the Municipal Act. *VSEA Petitions for Election of Collective Bargaining Representative (re: Chittenden County State's Attorney Employees, et al)*, 2016 VT 7 [VLRB Cite: 33 VLRB 119 (2014)].

The Court upheld the Board's dismissal of a petition filed by a police association 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. The Court affirmed the Board conclusion that the association had not presented evidence that facts had changed providing reasonable cause to warrant holding a hearing before the Board to reconsider the appropriateness of a proposed unit which had been found inappropriate by the Board in a 2012 decision. *New England Police Benevolent Association Petition for Election of Collective Bargaining Representative (Re: Sworn Law Enforcement Officers)*, 2016 VT 67 [VLRB Cite: 33 VLRB246 (2015)].

The Court reversed a Board decision that just cause did not exist for the dismissal of a State Agency of Transportation environmental biologist. The Board had reduced the dismissal to a 30-day suspension. The Court reinstated the dismissal. *In re Grievance of Lepore*, 2016 VT 129 [VLRB Cite: 33 VLRB 290 (2016)].

At the end of 2016, there were no appeals of Board decisions pending at the Court. The paucity of recent appeals and the Board success rate on appeals has resulted in a high rate of effectiveness of Board decisions. During the past ten years, the number of Court decisions on appeals of Board decisions has been substantially reduced. There have been only 19 Court decisions during this period, compared to 43 decisions during the preceding ten years. The Board has been fully affirmed in 14 of the 19 cases, and reversed in 5 cases, an affirmance rate of 74 percent. During this period, the chance of a Board decision remaining in effect and not being reversed has been 98 percent.

Dated this 12th day of January, 2017, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Timothy J. Noonan

Timothy J. Noonan, Executive Director

/s/ Gary F. Karnedy

Gary F. Karnedy, Chairperson

/s/ Richard W. Park

Richard W. Park

/s/ James C. Kiehle

James C. Kiehle

/s/ Alan Willard

Alan Willard

/s/ Edward W. Clark

Edward W. Clark, Jr

/s/ Robert Greemore

Robert Greemore.