

VERMONT LABOR RELATIONS BOARD
2020 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, 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.

The major goal of the Board is to ensure that cases 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 2020. 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 2011 through 2020. 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 above average in 2020. 63 cases were opened or reopened, compared to the annual average of 59 cases over the past ten years. The Board closed 62 cases during the year, slightly above the annual average of 60 cases. There were 20 cases open at the end of 2020, below the annual average of 22 open cases. Only five open cases have been open longer than six months, and none open longer than 9 months. Despite the significant delays in case processing during the early months of the COVID-19 pandemic, the Board was able to substantially reduce its backlog in the second half of the year. This resulted from a concentrated effort by the Board to reduce the backlog, the ability to schedule meetings and hearings on cases more quickly when they moved from in-person gatherings to the Microsoft Teams video and audio platform, and cooperation by the parties.

The following table indicates how the 62 cases were closed:

How Cases Were Closed	Number of Cases
Board decision	8
Settlement or withdrawal of case	36
Certification of union as representative	8
Order decertifying union as representative	2
Order granting unit clarification petition	1
Order amending certification	1
Order appointing mediator	4
Order dismissing case for failure to proceed	2

The number of hearing/meeting days for the Board was above average in 2020. The Board scheduled 25 cases to be heard on 33 days. The number of hearing/meeting days actually held 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:

	2016	2017	2018	2019	2020
Cases Filed	73	60	54	52	63
Cases Closed	71	57	49	64	62
Hearing/Meeting Days	13	13	18	13	19
Cases Heard	12	6	13	10	9

The average length of time between the filing of a case with the Board and scheduled hearing was 208 days, above the annual average of 178 days. This was due to the cancellation of hearings from mid-March to early June due to the emergency situation resulting from the pandemic. The average time between filing and closing of a case was 181 days, compared to the annual average of 160 days. Again, this was primarily due to delays caused by the pandemic.

There have been a high number of case settlements and withdrawals during the past several years. The Board places emphasis on attempting to informally resolve cases and narrow issues in dispute. Prior to 2020, this was done through use of informal meetings and conference calls. In 2020, the Board shifted to use of the Teams video and audio platform due to the pandemic. In many cases, both pre and post-pandemic, this has paid substantial dividends in informal resolution of cases. Further, the parties are settling many cases without extensive involvement by the Board.

58 percent of cases were closed by settlement or withdrawal in 2020. 52 percent, 59 percent, 54 percent, 56 percent, and 50 percent were so closed in 2019, 2018, 2017, 2016 and 2015, respectively. The percentage of cases closed by settlement or withdrawal during the past ten 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.

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. Early in 2021, the Board will publish the 24th revision to its *Guide to Vermont Labor Relations Statutes* and issue Volume 35 of Board *Opinions*. 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 2020, 3) an updated alphabetical index of all Board opinions covering the period 1977 through 2020, 4) an updated subject index of Vermont Supreme Court public sector labor relations decisions through 2020, 5) a digest of all Vermont Supreme Court decisions on appeals of Board decisions through 2020, and 6) the Board *Rules of Practice*. Volume 35 of Board *Opinions* contains decisions issued in 2019 and 2020, copies of the 2019 and 2020 Annual Reports, a listing of unions certified and decertified by the Board during the past two years, and an alphabetical index of opinions issued these years.

The Board presented no training sessions during 2020, but will be presenting three days of training in the spring of 2021. The first training session will be on presenting unit determination and representation cases to the Board. The second session will address presenting unfair labor practice cases to the Board. The remaining training session will focus on dealing with difficult substantive and procedural issues that arise in discipline and other cases in administering collective bargaining contracts. Executive Director Timothy Noonan will be trainer for these sessions that have been presented regularly for more than 20 years. Labor relations practitioners have demonstrated a continuing interest in training that can assist them in preventing and resolving labor relations disputes.

In the spring of 2021, the Board also plans to issue the 5th edition of *The Evolving Vermont Labor Relations Law*, authored by Executive Director Noonan. The purpose of this treatise is to present Vermont labor relations practitioners with a comprehensive treatment of statutory, case law and administrative developments impacting labor relations in the state.

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.

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. The annual ALRA conference was scheduled to be held in July 2020 in Vancouver, British Columbia, but was canceled due to the pandemic.

ALRA did present two virtual seminars this year. The first seminar addressed adjudicating labor disputes during the pandemic. Noonan was one of the presenters, focusing on the Board's experience in moving exclusively to virtual hearings and meetings. Board Members Alan Willard and Roger Donegan attended the seminar. The second seminar covered mediating labor disputes during the pandemic. Noonan attended this seminar.

Noonan also was one of the presenters at a virtual seminar sponsored by the Vermont Attorney General's Office. He discussed the Board's experience in conducting virtual hearings and meetings during the pandemic.

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 was scheduled to sponsor a two-day training session in April 2020 at the University of Massachusetts at Amherst. Noonan was one of the coordinators for the training session. The training session was

canceled due to the pandemic. The Consortium is now planning a virtual training session to be held in March 2021.

LEGISLATION

A bill enacted into law during the 2020 legislative session amends the unit determination and election provisions of the State Employees Labor Relations Act and the Municipal Employee Relations Act. Specific timeframes are established for employer responses to election petitions, Board hearings to resolve any unit determination issues, and scheduling of union representation elections. The statutes previously did not set specific timeframes.

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:

	2016	2017	2018	2019	2020
Grievances	28	31	27	22	34
Unfair Labor Practices	18	9	16	12	12
Unit Determination / Representation	19	17	8	16	13
Miscellaneous	8	3	3	2	4

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

UNIT DETERMINATIONS AND REPRESENTATION ELECTIONS

Unit determination/representation case filings in 2020 were below average. 13 cases were filed, compared to the annual average over the last ten years of 16 cases. Eleven cases were filed under the Municipal Employee Relations Act; the remaining two cases arose from the State Employees Labor Relations Act.

11 of the 13 cases filed in 2020 were closed by the end of the year. In addition, the Board closed the six unit determination/representation cases pending at the beginning of 2020. The following table indicates how the 17 cases were closed:

How Cases Were Closed	Number of Cases
Board order certifying union as representative subsequent to election	7
Board certification of voluntary recognition	1
Board dismissal of election petition	1
Board order decertifying union as representative	2
Board decision on unit clarification petition	3
Board decision on union affiliation petition	1
Dismissal based on settlement or withdrawal	2

The Board issued five unit determination/representation decision in 2020, compared to the annual average of 2.7 such decisions. Three decisions concerned whether employees should be excluded from bargaining units as supervisory or confidential employees. The Board held that the Operations Supervisors and Training Supervisors of Green Mountain Transit Authority are supervisory employees as defined by the Municipal Employee Relations Act, and dismissed a petition filed by Teamsters Local 597 to represent them. *Teamsters Local 597 and Green Mountain Transit Authority*, 35 VLRB 390. Similarly, the Board determined that the Highway General Foreman, Wastewater Chief Plant Operator and Chief Water System Operator of the Town of Hartford Public Works Department are supervisory employees under the Municipal Act, and are thereby excluded from the right to be included in a bargaining unit represented by a union. *International Brotherhood of Electrical Workers Local 300 and Town of Hartford*, 35 VLRB 453. In the third case, the Board concluded that the Financial Assistant to the Business Manager of the Hannaford Career Center is a confidential employee and denied a petition filed by the Addison Central Education Association to include the Financial Assistant in the bargaining unit represented by the Association. *Addison Central Education Association (Hannaford Regional Technical School District Support Staff Unit) and Hannaford Career Center*, 35 VLRB 503.

In another unit determination decision, the Board acted on a petition filed by the Vermont State Employees' Association seeking clarification of the Judiciary Bargaining Unit represented by VSEA to include 15 employees who were designated by the Judiciary Department as temporary employees. The Board granted the petition to the extent of adding eight of the employees to the bargaining unit based on their employment on a limited status basis. The employees hold positions as either Court Officer B, Docket Clerk B, or Guardian Ad Litem Coordinator. *Vermont State Employees' Association and Judiciary Department of the State of Vermont*, 35 VLRB 471.

In the fifth decision, the Board granted a petition filed by AFSCME Council 93, Local 1343, to amend the certification of the South Burlington City Hall and Public Works Employees Association as the representative of certain City of South Burlington employees to recognize the affiliation of the Association with AFSCME. *Petition of AFSCME Council 93, Local 1343, AFL-CIO (Re: City of South Burlington Employees)*, 35 VLRB 413.

The Board conducted eight elections during the year, compared to the annual average over the last ten years of 7.1 elections. Six elections were conducted under the Municipal Employee Relations Act. The remaining two elections came under the State Employees Labor Relations Act.

The International Brotherhood of Electrical Workers ("IBEW") prevailed in elections to represent employees in three of the municipal elections. IBEW was certified as representative of Town of Johnson public works employees, public works technicians of the Village of Lyndonville Sewer and Water Department, and wastewater plants employees, water operators, and parks and recreation employees of the Town of Hartford. In the Hartford election, IBEW replaced the International Union of Public Employees ("IUPE") as the employees' representative.

In a fourth municipal election, the IUPE was certified as the representative of assistants, bookkeepers, and public works employees of the Town of Woodstock. The remaining two municipal elections involved police department employees. Village of Woodstock police department employees elected to be represented by the New England Police Benevolent Association. The Montpelier Police Supervisors Association, FOP Lodge #003, was certified as representative of sergeants and dispatch supervisors of the Montpelier Police Department.

In one of the elections conducted under the State Employees Labor Relations Act, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO prevailed in an election to represent instructors employed by Northern Vermont University Online. In the other State Employees Act election, Department of Corrections employees currently included in the Non-Management Bargaining Unit represented by the Vermont State Employees' Association, and employees in the existing Corrections Bargaining Unit represented by VSEA, voted to be organized together into a revised Corrections Bargaining Unit.

GRIEVANCES

The number of grievances filed in 2020 was well above average. 34 grievances were filed or reopened during the year, compared to the annual average of 25 grievances during the last ten years.

26 grievances were filed on behalf of state employees, compared to the annual average of 21 such grievances. 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.

21 of the state employee grievances were filed by the Vermont State Employees' Association ("VSEA"). The five remaining state employee grievances were filed by, or on behalf of, employees without VSEA involvement. Grievances contesting dismissals constituted 11 of the 26 state employee grievances. Three other grievances concerned alleged violations of the collective bargaining agreement and/or policies in the filling of vacant positions. No other issue was the subject of a grievance more than once.

The two judiciary grievances involved alleged violation of the right to union representation, and discrimination, harassment, and retaliation against employees. The three grievances filed on behalf of State Colleges employees involved payroll inaccuracies, emergency closing provisions, and failure to compensate properly and leave time issues stemming from COVID-19. The three University of Vermont grievances were filed by United Academics concerning the full-time faculty bargaining unit. They involved deferred sabbaticals, failure to promote, and reducing the appointment of lecturers to .75 full-time equivalency.

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:

	2016	2017	2018	2019	2020
State Employees	24	27	24	16	26
State Colleges Employees	1	1	2	3	3
UVM Employees	2	3	1	1	3
Judiciary Employees				2	2

The Board issued 6 decisions on grievances arising from state employee bargaining units, in line with the annual average of 6.1 such decisions during the past ten years. Five decisions involved dismissals of employees. 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

No decisions issued by the Board were appealed to the Vermont Supreme Court in 2020. This compares to an annual average of 16 percent of Board decisions appealed over the past ten years. No appeals of Board decision are pending at the Court.

The Court issued two decisions on appeals of Board decisions in 2020. In one case, the Court affirmed the Board in part, and reversed in part. The Court affirmed the parts of the Board decision sustaining the grievance of a liquor control investigator that the State violated various provisions of the collective bargaining agreement in denying him compensation and leave benefits upon his hiring after he had served as a state transport deputy sheriff. The Court reversed the portion of the Board decision holding that the employee was not entitled to the promotional pay rate when he was hired. *In re Grievance of Michael Welch*, 2020 VT 72 [VLRB Cite: 35 VLRB 19 (2019)]. In the second case, the Court reversed a Board decision that the grievant, a former correctional officer who was entitled to mandatory reemployment rights pursuant to the collective bargaining agreement, met the minimum qualifications for a position at the Department of Motor Vehicles. *In re Grievance of Jacob Carnelli*, 2020 VT 2 [VLRB Cite: 35 VLRB 19 (2019)].

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 ____ day of January, 2021, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Timothy J. Noonan
Timothy J. Noonan, Executive Director

/s/ Richard W. Park
Richard W. Park, Chairperson

/s/ Alan Willard
Alan Willard

/s/ Robert Greemore
Robert Greemore

/s/ David R. Boulanger
David R. Boulanger

/s/ Karen F. Saudek
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/s/ Roger P. Donegan
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