



Employment Relations Board

Presentation to the Joint Committee On Ways and Means Subcommittee On General Government

Adam Rhynard

Board Chair

January 27, 2021

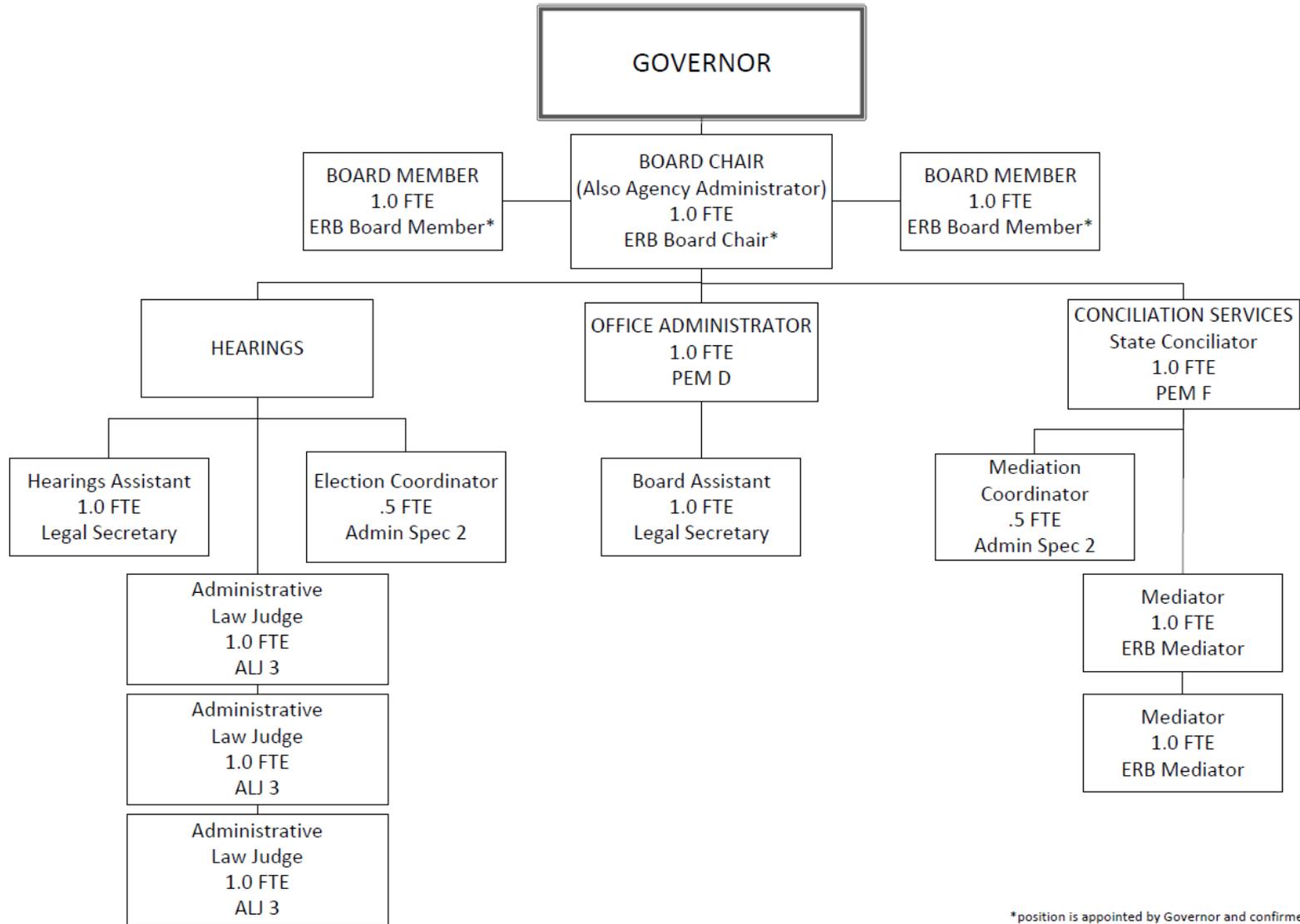


Agency Mission

Resolve disputes concerning labor/employment relations for approximately 275,000 employees in the public (and private) sector under our jurisdiction.



Employment Relations Board Program Structure (13 FTE)



*position is appointed by Governor and confirmed by Senate



Statutory Responsibilities

- The Board is statutorily charged with administering 3 statutory schemes, over which it has exclusive jurisdiction:
 - 1. Public Employee Collective Bargaining Act (PECBA)*
 - 2. State Personnel Relations Law (SPRL)*
 - 3. Private Sector Labor-Management

*These two statutes represent almost all of the agency's work.



Statutory Responsibilities

- Dispute resolution agency for all public sector employers, employees, and labor organizations that represent those employees.
 - State agencies
 - Local governments (Cities, counties, school districts, etc.)
- Implement the laws that protect the rights of public employees to organize and negotiate collectively with their employers
- Determine all representation matters regarding public sector employers, employees, and labor organizations
- Resolve appeals from State employees regarding certain types of personnel actions



Statutory Goals

- Develop cooperative relationships between government and its employees
- Provide efficient dispute resolution to minimize interruption of public services
- Protect the public by attempting to assure the orderly and uninterrupted operations and functions of government
- Improve employer-employee relations by providing uniform basis for employee choice in union representation



Fulfilling the Legislative Mandates

- We resolve disputes in multiple ways:
 - Adjudication of unfair labor practice complaints and SPRL appeals
 - Mediation
 - Processing petitions concerning employee representation by a labor organization
 - Maintaining and providing a roster of qualified arbitrators

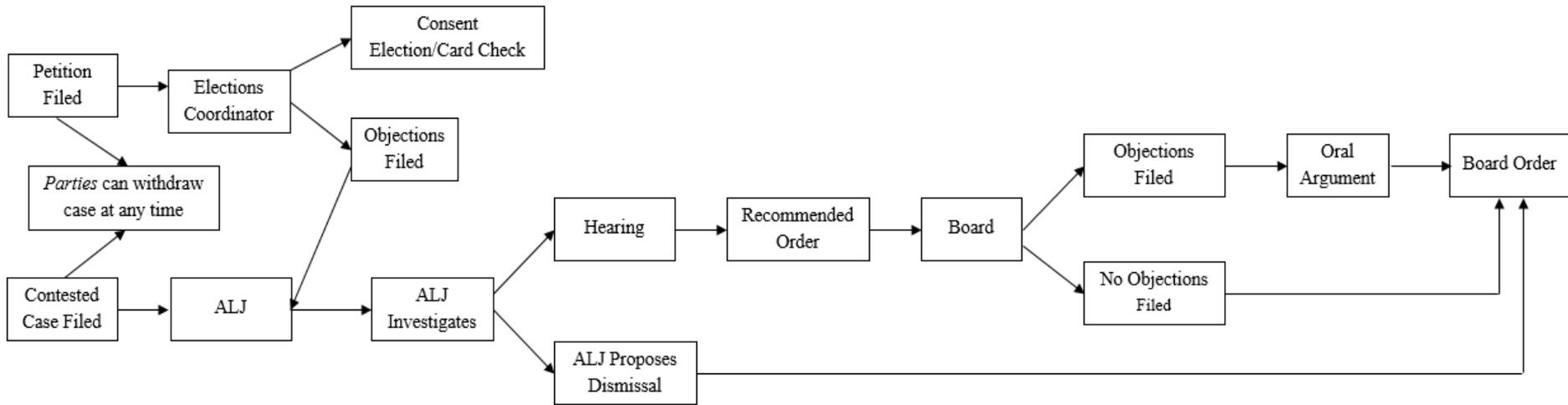


Fulfilling the Legislative Mandates

- Contested Case Hearings
 - ALJs conduct hearings and issue recommended orders
 - Board is the state’s “labor appeals court”
- Mediation
 - Assist parties in resolving bargaining dispute without resorting to “self help” (strikes, implementations)
 - Assist parties in resolving disputes without litigation
- Processing Representation Petitions
 - Ensure the right to opt for or against union representation

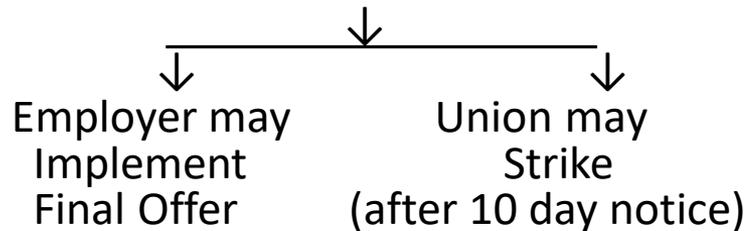


Case Flow Chart (Hearings & Elections)



Case Flow Chart (Mandatory Mediation)

- **Strike Permitted Unit Bargaining Process**
- Direct Bargaining (minimum 150 days)
- ↓
- Mediation (minimum 15 days)
- ↓
- Impasse
- ↓
- Final Offer and Costing
- (within 7 days of impasse)
- ↓
- 30 day Cooling Off Period
-



Case Flow Chart (Mandatory Mediation)

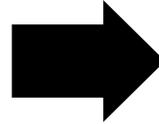
- **Strike Prohibited Unit Bargaining Process**
- Direct Bargaining (minimum 150 days)
- ↓
- Mediation (minimum 15 days)
- ↓
- Impasse
- ↓
- Final Offer, Costing & Petition
- To Initiate Arbitration (within 7 days of impasse)
- ↓
- 30 days Cooling Off Period
- ↓
- Last Best Offer Filed With Arbitrator (14 days before hearing)
- ↓
- Arbitration Hearing (scheduled after Cooling Off Period)
- ↓
- Arbitration Decision (within 30 days from close of hearing)



2013-Present

2013

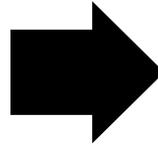
Enormous backlog of cases



Now

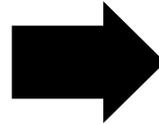
No backlog—all cases timely processed.

Long case processing time and delays in issuing Recommended and Final Orders



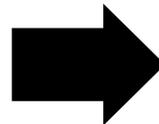
Dramatic reduction in case processing time. Average time for issuing final orders reduced from 132 days to 29 and recommended orders reduced from 211 days to 97

Prolonged resolution of representation matters



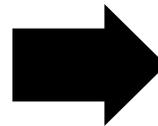
Expedited resolution of representation petitions (from 74 days to 33 for cases w/out hearing)

Lower mediation success



Greater resolution of disputes without strikes or interest arbitration (from 79 and 68 to for strike PE and PO to 100 and 91)

Delayed availability for hearings and mediations



Prompt availability of hearing and mediation dates

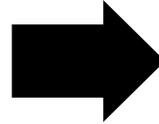


Agency Efforts to Improve Services and Contain Costs

Agency Action

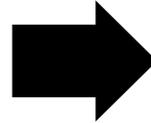
Result

Update and maintain SPRL case digest



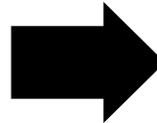
Provided up-to-date digest for individuals/practitioners researching case law

Drafted User Guides to State Personnel Relations Law Cases and Unfair Labor Practices



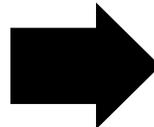
Enhanced communication with customers and stakeholders. Increased public awareness and access to agency procedures and resources

Conducted outreach programs throughout the state with the Board and Conciliation



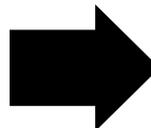
Broadened awareness of and access to the Board and the agency's training services.

Updated agency's rules regarding union representation



A more reader-friendly set of rules to help individuals navigate the variety of petitions and regulations governing those petitions

Implementation of e-filing



Allows parties and agency staff full electronic access to case files and case management



Case Management and E-filing System

- Phase I—Authorized in 2015-17 LAB (Delivered 2018)
 - Deliverables-based project with NIC USA through DAS
 - Complex and agency-specific software and build
 - Reduce reliance on paper-heavy manual systems
 - Increase efficiency in agency processes
- Phase II Authorized in 2017-19 LAB (Delivered 2019)
 - Allow for stakeholder e-filing (including online payment)
 - No user fee to use system or make online payment





Agency Response to COVID-19

Increase in workload

Current FY projects 106 Hearings and Elections case filings (average of last 4 FYs is 75)

Providing full range of services virtually (hearings, oral arguments, mediation, and training)

Stakeholder engagement and education (webinars, prehearing practice runs)

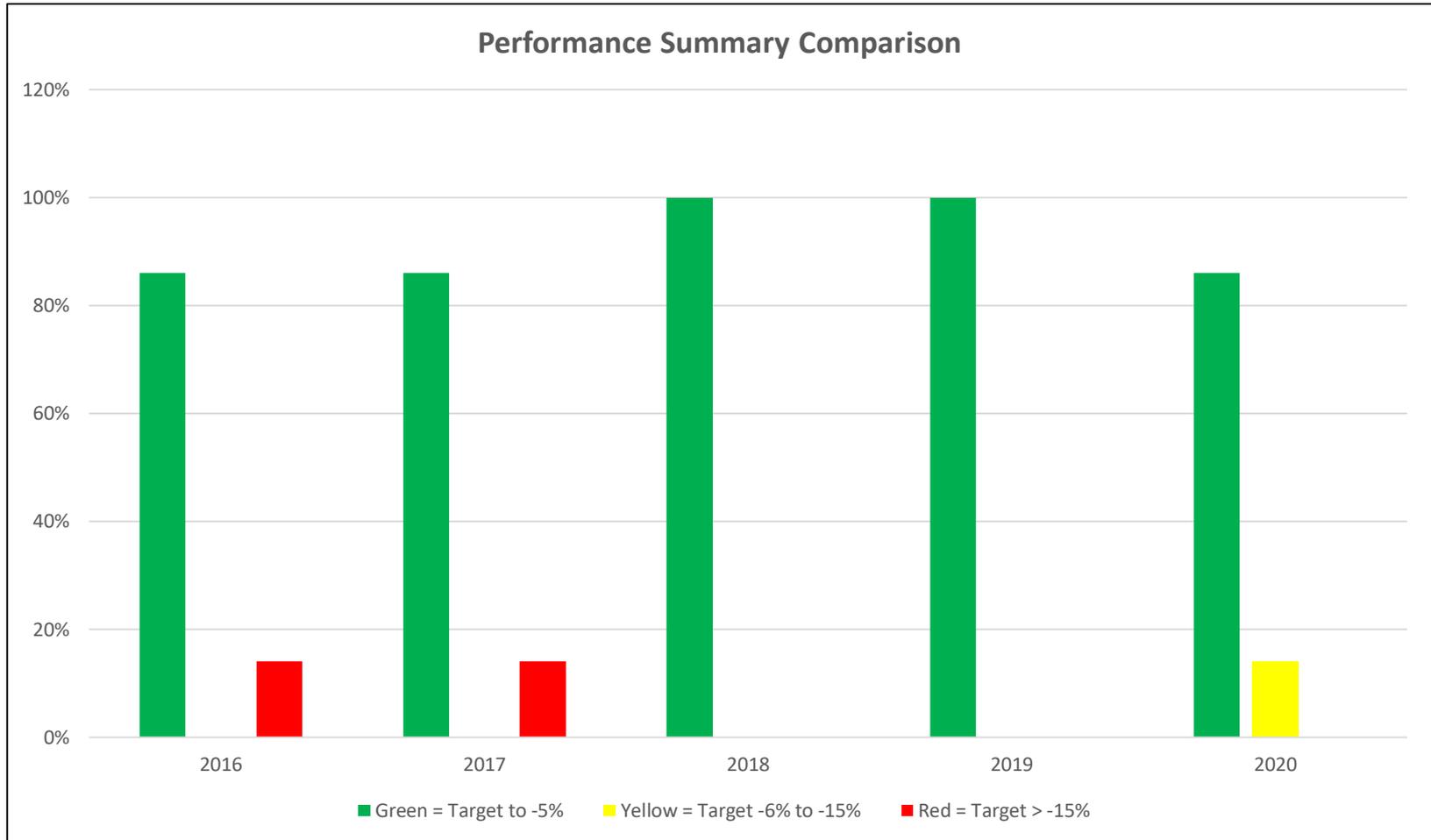


Key Performance Measures

KPM #	19-21 Key Performance Measures
1	Union representation – Average number of days to resolve a petition for union representation when a contested case hearing is not required. [Green]
2	Recommended orders – Average number of days for an Administrative Law Judge to issue a recommended order after the record in a contested case hearing is closed. [Green]
3	Final Board orders – Average number of days from submission of a case to the Board until issuance of a final order. [Green]
4	Mediation effectiveness – Percentage of contract negotiation disputes that are resolved by mediation for strike-permitted employees. [Green]
5	Appeals – Percentage of Board Orders that are reversed on appeal. [Green]
6	Mediation effectiveness – Percentage of contract negotiation disputes that are resolved by mediation for strike-prohibited employees. [Green]
7	Customer Satisfaction Survey – Percentage of customers who responded to survey rating the agency’s customer service as “good” or “excellent”: overall, timeliness, accuracy, helpfulness, expertise, availability of information. [Yellow] target is 95%



Key Performance Summary

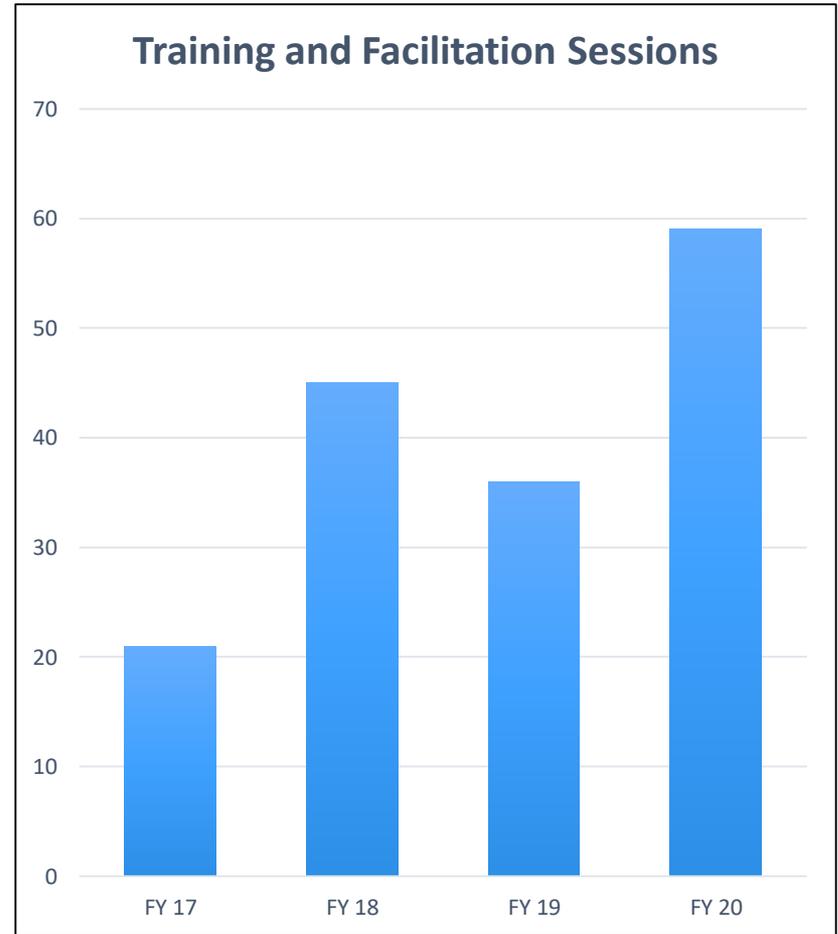
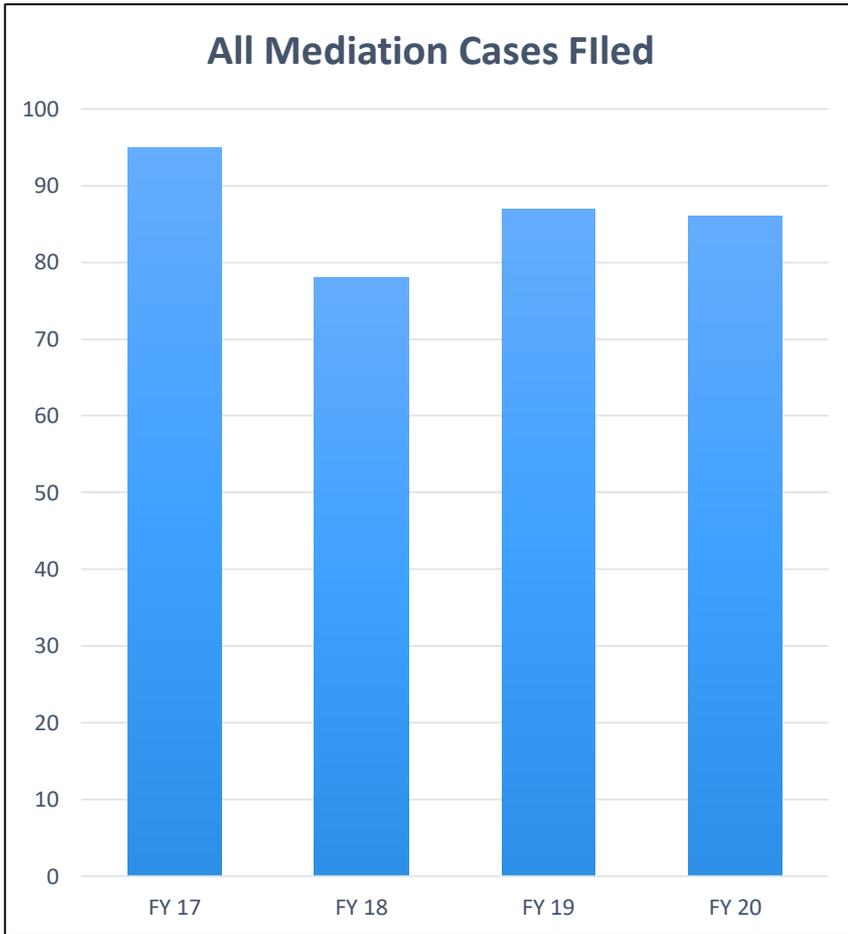


Budget Environment

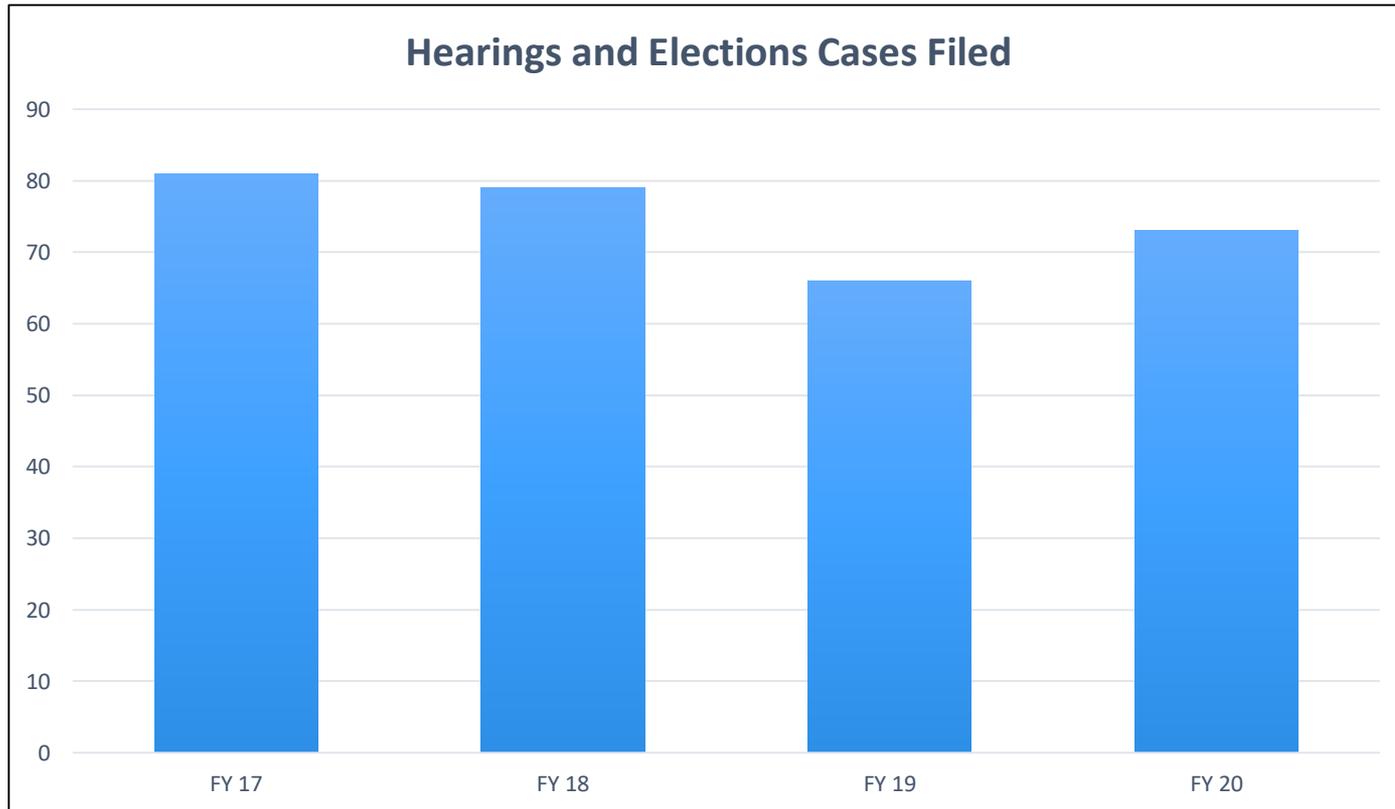
- 13 people to do the work
- Workload is variable depending on multiple factors, including the economy, legislation, and other external factors.
- State contract negotiations cyclical
- Other contract negotiations highly variable
- Increased demand for training and facilitation
- Increase in case filings for current year
- No specific COVID-19 budget-related issues



Conciliation Case Filings



Hearings and Elections Case Filings



Goals

- Maintain agency timeliness in responding to mediation requests and issuing recommended and final orders
- Expand stakeholder outreach and educational offerings, particularly in light of ongoing COVID-19 pandemic
- Use technology to continue providing full range of agency services in virtual environment, particularly in light of COVID-19 and likely limited ability to travel
- Create new user guide for representation cases in accordance with new rules
- Promote and expand our training and conciliation services
- Collaborate with other neutral organizations to educate and train entities under our jurisdiction in labor/management relations





Actions to Contain/Reduce Costs without Affecting Services

Maximize virtual services and minimize agency travel

Offer webinars and informational sessions with stakeholders

Fully utilize e-filing and case management tools

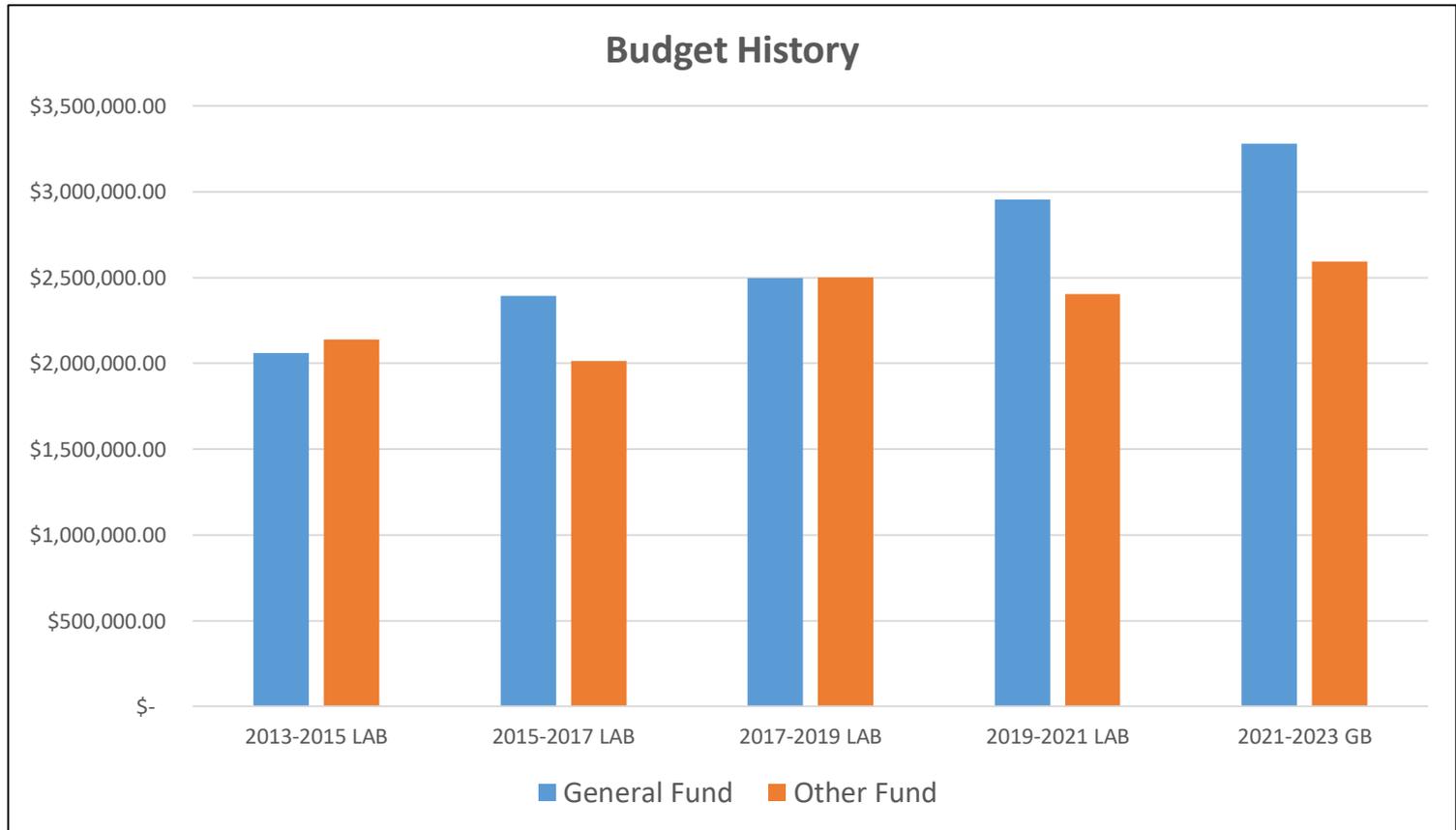


Sources of Revenue

- General Fund
 - Primary funding source for services provided to local governments
- Other Funds State Assessment
 - Per capita monthly assessment on state agencies that helps fund the agency's work performed on behalf of the state and its employees (estimated \$2.40)
 - Assessment based on number of state employees subject to ERB jurisdiction (typically about 38,000) and historical proportion of agency work done on behalf of state agencies
- Other Fund Fee Revenue
 - Three types of fees comprise this fund source
 - Statutory fees for conciliation services
 - Statutory fees for filing unfair labor practice complaints and answers
 - Statutory fees for arbitration panel and other miscellaneous fees



Budget History



Legislative Concepts

- HB 2061 (PECBA housekeeping/clean up bill following US Supreme Court decision in *Janus v. AFSCME* regarding fair share fees).
- No budgetary or fiscal impact



Questions?



Employment Relations Board

Appendices for the
Presentation to the Joint Committee on Ways and Means
Subcommittee on General Government

Table of Contents

Appendix A: Policy Option Package 100.....	Pg. 1
Appendix B: Ending Balance Form.....	Pg. 2
Appendix C: Reduction Options.....	Pg. 3
Appendix D: Fee Schedule.....	Pg. 4



Appendix A

Policy Option Package 100

Policy Package #100, DAS Volume Based Charges

Purpose: To acquire funding for DAS volume based charges above standard inflation.

How Achieved:

Various Department of Administrative Services (DAS) charges and rates for AY 2021-2023 have increased from AY 2019-2021. These costs were analyzed based on the current average rate of usage using the new rates compared to the previous biennium's estimates. One difference is the new charge for Workday Human Resource system. Another cost that increased was for DAS accounting and budgeting services. Those DAS accounting and budget charges increase more than standard inflation because they are mostly for personal services of DAS staff involved in ERB's accounting, budgeting, accounts receivable, and accounts payable activities. Another DAS charge that increased is for data processing. The main driver for increased data processing costs are for the DAS IT Help Desk charge that went from \$183.25 per ERB position per month for AY 2019-2021 to \$555.62 per ERB position per month for AY 2021-2023.

Staffing Impact: No additional impact.

Quantifying Results: The total need: \$59,321 GF and \$37,984 OF, totaling \$97,305.

Revenue Source: General Fund (GF) and State Assessment Revenue (OF) budgeted in SCR 030-Board and Administration

Package No. # - 100, DAS Volume Based Charges

SERVICES AND SUPPLIES						
Description	GF	Lottery	OF	FF	Non Limited	All Funds
Other Services and Supplies	\$ 59,321	\$ -	\$ 37,984	\$ -	\$ -	\$ 97,305
Total Services and Supplies	\$ 59,321	\$ -	\$ 37,984	\$ -	\$ -	\$ 97,305
TOTAL REQUEST	\$	\$	\$	\$	\$	\$
TOTAL POSITIONS/FTE	0 / 0.00	0 / 0.00	0 / 0.00	0 / 0.00	0 / 0.00	0 / 0.00



Appendix C

Reduction Options

Agency Name: <i>Employment Relations Board (ERB)</i>															
2021 - 2023 Biennium															
Detail of Reductions to 2021-23 Current Service Level Budget															
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Priority (ranked most to least preferred)	Agency	SCR or Activity Initials	Program Unit/Activity Description	GF	LF	OF	NL-OF	FF	NL-FF	TOTAL FUNDS	Pos.	FTE	Used in Gov. Budget Yes / No	Impact of Reduction on Services and Outcomes	
Dept	Prgm/ Div														
			5 % Reduction							\$ -					
										\$ -					
		11500	50	Hearings: One Administrative Law Judge (ALJ) reduced by 25 FTE (30 hours per week) for the Biennium	(45,866)		(36,038)			\$ (81,904)		(0.25)			Reducing hours for an ALJ will make it difficult to process cases in a timely manner, and an increase of time to issue a recommended order would likely once again occur.
		11500	30	Board & Administration: Two Board Members and Board Chair reduced to .10 FTE (36 hours per week), each for the Biennium	(53,522)		(42,053)			\$ (95,575)	0	(0.10)			Reducing hours for Board members will make it difficult to process cases in a timely manner, and a backlog of cases could accrue.
		11500	50	Reduce Services and Supplies - Travel for Hearings	(2,471)		(20,254)			\$ (22,725)					The reduction on hearings travel will affect stakeholders outside of the Salem area, as those stakeholders would need to either travel to Salem for hearings or conduct them via videoconference.
		11500	30	Reduce Services and Supplies - Employee Training, Office Expenses, Dues and Subscriptions, and IT Expendable Property	(5,577)		(2,960)			\$ (8,537)					Reductions in S&S will greatly restrict the agency's ability to give employees training. The agency is already restricted to how many trainings or conferences each staff member is able to attend. The reduction in Office Expenses, Dues and Subscriptions as well as IT Expendable Property will also greatly restrict the agency's ability to do business. The agency already restricts purchases of office supplies and IT supplies and services.
		11500	40	Reduce Services and Supplies - Mediation Travel	(32,863)					\$ (32,863)					The reduction on Mediation travel will affect stakeholders outside of the Salem area, as those stakeholders would need to either travel to Salem for hearings or conduct them via videoconference.
				Second 5% Reduction											
		11500	50	Hearings: Reduce .75 FTE ALJ	(137,598)		(118,661)			\$ (256,259)	(1)	(0.75)			Reducing an ALJ will make it difficult to process cases in a timely manner, and an increase of time to issue a recommended order would likely once again occur.
		11500	40	Mediation Reduce .25 Mediator	(50,296)		(39,518)			\$ (89,814)		(0.25)			Reducing hours for a Mediator will make it difficult to process cases in a timely manner, and an increase of time to issue a recommended order would likely once again occur.
										\$ -					
										\$ -					
				Total	(328,193)	-	(259,484)	-	-	\$ (587,677)	(1)	(1.35)			



Appendix D

2021-23 Fee Schedule

Type of Fee	Amount of Fee	Statutes/Rules
Unfair Labor Practice	Complaint - \$300 Answer - \$300 Intervener - \$300	ORS 243.672(3); 115-070-0000; 115-070-0035
Arbitrator Panel	Application - \$100 Annual - \$150	ORS 662.445(2); OAR 115-040-0030(4)
Local Public Employer Collective Bargaining Mediation	\$1,000 for the first two sessions \$625 for the third session \$625 for the fourth session \$1,000 for each additional session	ORS 240.610(2); OAR 115-040-0005(1)
Local Public Employer Grievance Mediation	\$500 per session – each party pays \$250	OAR 115-040-0005(2); ORS 662.425 ORS 240.610
Local Public Employer Unfair Labor Practice Mediation	\$500 per session – each party pays \$250	OAR 115-040-0005(3); ORS 662.425; ORS 240.610
Local Public Employer Training	Two-day training - \$2,500 One-day training - \$1,500 Half-day program - \$700	ORS 240.610 OAR 115-040-0005(4)
Local Public Employer Facilitation	\$60 per hour including travel time	OAR 115-040-0005(4)
Public Records	Certified true copies of transcripts and/or documents - \$1.50 per page Other Copies and public records - \$.25 per page Copy of the recording of a hearing - \$15.00 for the first CD; \$10 for each subsequent CD	115-010-0032(5)

Note: As set forth by OAR 115-010-0032(5)(f), no fees will be charged to state agencies for providing copies of Board transcripts, tapes, orders, or any document or exhibit included in a case record that is not exempt from disclosure under ORS 192.410 to 192.505.

