

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
SENATE
109TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. S-191)

COMMITTEE AMENDMENT "A" to S.P. 197, L.D. 464, Bill, "AN ACT Permitting Binding Arbitration for Public Employees in Critical Public Services."

Amend the bill in section 2, in that part designated "§965-A." subsection 3, by inserting at the end the following new sentence:

'Any arbitrator selected shall be a resident of Maine.'

Further amend the bill in section 2 by adding at the end the following:

'12. Legislative review. In January of each regular session, the Maine Labor Relations Board shall report to the Legislature on the effectiveness of this section's ^{approach} and section 979-P's approach to binding arbitration. This section and section 979-P are repealed March 1, 1984.'

Further amend the bill in section 4, in that part designated "§979-P." subsection 3, by inserting at the end the following new sentence: 'Any arbitrator selected shall be a resident of Maine.'

Further amend the bill in section 4 by adding at the end the following:

'12. Legislative review. In January of each regular session, the Maine Labor Relations Board shall report to the Legislature on the effectiveness of this section's ^{approach} and section 965-A's approach to binding arbitration. This section and section 965-A are repealed March 1, 1984.'

Further amend the bill by inserting at the end the following:

'Sec. 5. 26 MRSA c. 23 is enacted to read:

CHAPTER 23
PENALTIES FOR ILLEGAL STRIKES BY
EMPLOYEES SUBJECT TO BINDING ARBITRATION

§1651. Strike prohibition

All public employees and public employee organizations
covered under section 962, subsection 2-B, and section 979-A, subsection 3-A,
are prohibited
from engaging in a strike, or from causing, instigating,
encouraging or condoning a work stoppage, slowdown or strike
or from blacklisting a public employer for the purpose of
preventing that employer from filling employee vacancies.

§1652. Employee organization violation and penalties

1. Penalties. An employee organization which is deter-
mined by the Maine Labor Relations Board to have violated the
provisions of section 1651 shall be unable to:

- A. Automatically deduct membership dues from employee
paychecks;
- B. Collect an agency fee from employees not members
of the organization; or
- C. Require employees, ^{upon being hired,} to join an employee organization

The penalties described in this ^{subsection} / are not meant to be the
exclusive penalties for violation of section 1651.

2. Institute proceedings. In the event that it appears
that a violation of section 1651 may have occurred, proceedings

before the Maine Labor Relations Board may be instituted in the manner prescribed in sections 968, 979-H and 1029.

3. Determination. In determining whether an employee organization has violated section 1651, the board shall consider:

A. whether the employee organization called the strike or tried to prevent it; and

B. whether the employee organization made or was making good faith efforts to terminate the strike.

4. Penalties. If the board determines that an employee organization has violated the provisions of section 1651, the board may order forfeiture of the ^{abilities} described in subsection 1 for the specified period of time as the board shall determine. In the discretion of the board these ^{abilities} may be forfeited for an indefinite period of time. They may be restored upon application, with notice to all interested parties, if there is evidence of good faith compliance with the requirements of section 1651 since the date of the violation. This evidence of good faith may include, for example, the successful negotiation, without a violation of section 1651, of a contract covering the employees in the unit affected by the violation.

← where a fine imposed on an employee organization pursuant to an injunction remains unpaid, after the exhaustion of the cash and securities of the employee organization, the board

shall direct that membership dues deduction shall be continued to the extent necessary to pay the fine and that the public employer shall transmit the money to the court. In fixing the penalties, the board shall consider all the relevant facts and circumstances, including, but not limited to:

A. the extent of any willful defiance of section 1651;

B. the impact of the strike on the public health, safety and welfare of the community;

C. the financial resources of the employee organization;

D. The refusal of the employee organization or the appropriate public employer or the representative thereof, to participate in good faith in the mediation and fact-finding procedures; and

E. Whether, if so alleged by the employee organization, the appropriate public employer or his representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike.

In determining the financial resources of the employee organization, the board shall consider both the income and the assets of the employee organization. In the event membership dues are collected by the public employer the books and records of the public employer shall be prima facie evidence of the amount so collected.

§1653. Employee violations and penalties

1. Presumption. For purposes of this chapter an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date when a work stoppage, slowdown or strike occurs, shall be presumed to have violated section 1651.

2. Prohibition against consent to strike. No person exercising on behalf of any public employer any authority over a public employee shall have the power to authorize or condone a work stoppage, slowdown or strike.

3. Determination. In the event that it appears that a violation of section 1651 or subsection 2 may have occurred, the chief executive of the government body or subdivision involved may, on the basis of such investigation and affidavits as he may deem appropriate, determine whether or not a violation has occurred. If the chief executive officer determines that a violation has occurred, he may then determine the names of employees who committed the violation. That determination shall not be deemed to be final until the completion of the procedures provided for in this section. For the purposes of this chapter, the chief executive officer shall include:

- A. For state government, the Governor;
- B. For municipalities, the mayor or first selectman;
- C. For school administrative units, the chairman of the school board; and

D. For the University of Maine, the Chancellor, for the Maine Maritime Academy, the Superintendent, for a vocational technical institute or school of practical nursing, the Director.

4. Notice. The chief executive officer shall notify each employee that he has been found to have committed a violation, the date of the violation and of his right to object to this determination. He shall also notify the chief fiscal official of the names of all the employees and of the total number of days, or part thereof, on which it has been determined that the violation occurred. Notice to each employee shall be by personal service or by certified mail to his last address filed by him with his employer.

5. Payroll deductions. Not earlier than thirty nor later than ninety days following the date of the determination or a final decision if the employee appeals, the

chief fiscal official of the government involved shall deduct from the compensation of each public employee an amount equal to twice his daily rate of pay for each day or part thereof that it was determined that he had violated section 1631; this rate of pay shall be computed as of the time of the violation. In computing this deduction, credit shall be allowed for amounts already withheld from the employee's compensation on account of his absence from work or other withholding of services on that day or days. In computing the thirty to ninety-day period of time following the determination of a violation and where the employee's annual compensation is paid over a period of time which is less than fifty-two weeks, that period of time between the last day of the last payroll period of the employment term in which the violation occurred and the first day of the first payroll period of the next succeeding employment term shall not be counted.

6. Objections and restoration. Any employee determined to have violated this chapter may object by filing with the chief executive officer, within twenty days of the date on which notice was served or mailed to him, his sworn affidavit, supported by available documentary proof, containing a short and plain statement of the facts upon which he relies to show that the determination was incorrect. The affidavit shall be subject to the penalties of perjury. If the chief executive officer shall determine that the affidavit and supporting proof establishes that the employee did not violate this chapter, he shall

sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to establish that the employee did not violate this chapter, he shall request a hearing on this issue before the Maine Labor Relations Board.

7. Maine Labor Relations Board. Within 20 days of the request of a chief executive officer, the Maine Labor Relations Board shall conduct a hearing as to whether an employee has violated this chapter. If the board determines that a violation has occurred, it may, in its discretion, levy the penalty described in subsection 5 or a lesser monetary penalty.

8. Additional penalties. The chief executive officer upon the final determination, including any appeal, that an employee violated this chapter may discharge him. If the employee is hired again, he shall earn again any seniority or pension benefits and rights. The penalties described in this subsection are not the exclusive penalties for violations of this chapter.

§1654. Application for injunctive relief

When it appears that public employees or an employee organization threaten or are about to do or are doing an act in violation of section 1651, the chief executive officer of the government involved may apply to the Superior Court for an injunction against the violation. If an order of the court enjoining or restraining such a violation does not receive compliance, the chief executive officer shall immediately apply to the Superior Court to punish that violation as a contempt of court.

Statement of Fact

The purposes of this amendment are to:

1. Require that any arbitrator selected be a Maine resident;
2. Require the Maine Labor Relations Board to report on the effectiveness of Title 26, sections 965-A and 979-P;
3. Automatically repeal those sections in $4\frac{1}{2}$ years; and
4. Establish specific penalties for illegal strikes.

Reported by the Majority of the Committee on Labor.

Reproduced and distributed pursuant to Senate Rule 11-A.

May 15, 1979

(Filing No. S-191)