

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 211
6

7 H.P. 177

House of Representatives, January 29, 1985

8 Reference to the Committee on Labor suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Diamond of Bangor.

Cosponsored by Representative Weymouth of W. Gardiner.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Incorporate Last Best Offer
18 Provisions into the Municipal Public
19 Employees Labor Relations Law for
20 School Employees.
21

22 Be it enacted by the People of the State of Maine as
23 follows:

24 Sec. 1. 26 MRSA §962, sub-§4-C is enacted to
25 read:

26 4-C. Economic issue. "Economic issue" means an
27 issue that concerns wages, pensions or insurance.

28 Sec. 2. 26 MRSA §962, sub-§8 is enacted to read:

29 8. School employee. "School employee" means any
30 employee of a public employer who is a public employ-
31 ee in a school administrative unit.

32 Sec. 3. 26 MRSA §965, sub-§7 is enacted to read:

1 7. Arbitration for school employees.

2 A. A bargaining agent for school employees may
3 request arbitration only when a period of 45 days
4 has passed from the submission of the findings
5 and recommendations contained in the fact
6 finders' report, which 45-day period consists of
7 the 30-day period referred to in subsection 3,
8 plus 15 more days.

9 B. The bargaining agent for school employees
10 shall make the request for arbitration by notify-
11 ing the executive director and by serving written
12 notice upon the employer or its representative.

13 C. Upon notice of the bargaining agent's request
14 for arbitration, the parties shall have 7 days
15 from receipt of the notice to jointly agree to an
16 arbitration procedure which shall result in a
17 binding determination of their controversy. The
18 agreed upon plan shall include the number of arbi-
19 trators, the means of selection of the arbitra-
20 tors and the form of arbitration. The agreed
21 upon plan shall be filed within the 7-day period
22 with the executive director.

23 D. When the parties do not agree upon an arbi-
24 tration procedure, as provided for in paragraph
25 C, either party to the dispute may implement the
26 procedures provided for in this subsection by no-
27 tifying the executive director and the other par-
28 ty to the dispute of the failure to agree. Upon
29 serving that notice, the serving party shall re-
30 quest the American Arbitration Association to
31 submit to each of the parties identical lists of
32 names of arbitrators who would be eligible and
33 available to act as a neutral arbitrator in the
34 existing controversy, pursuant to its voluntary
35 labor arbitration rules.

36 Upon notice of selection, the arbitrator shall
37 set the time and place for a hearing to be held.

38 At least 7 days prior to the hearing, the arbi-
39 trator shall provide the notice of the time and
40 place of the hearing to the employer, bargaining
41 agent and executive director.

1 Not less than 2 days prior to the commencement of
2 the hearing, each party shall file with the execu-
3 tive director and the arbitrator and deliver to
4 the other party a proposed collective bargaining
5 agreement, in numbered paragraphs, which that
6 party is willing to execute and the cost data for
7 all provisions of the proposed agreement. At the
8 commencement of the hearing, each party shall
9 file with the arbitrator a reply setting forth
10 those paragraphs of the proposed agreement of the
11 other party which it is willing to accept, and
12 those paragraphs of the proposed agreement of the
13 other party which it is unwilling to accept, to-
14 gether with any alternative contract language
15 which it would accept in lieu of those paragraphs
16 which it is unwilling to accept. At any time
17 prior to the expiration of the 10-day period af-
18 ter the taking of the testimony, the parties may
19 jointly file with the arbitrator stipulations
20 setting forth the agreement provisions which both
21 parties have agreed to accept. Within 5 days af-
22 ter the conclusion of taking testimony, the arbi-
23 trator shall forward to each party and to the ex-
24 ecutive director an arbitration statement, set-
25 ting forth in numbered paragraphs all agreement
26 provisions agreed upon by both parties in the
27 proposed agreements, the replies and the stipula-
28 tions, and stating, in numbered paragraphs, those
29 issues which are resolved. The arbitration
30 statement shall set forth in numbered paragraphs
31 all of the unresolved items and identify which of
32 the unresolved items are economic issues. The
33 determination of the arbitrator as to the issues
34 in dispute and as to which issues are economic
35 shall be conclusive. Within 10 days after the
36 conclusion of the taking of testimony, the par-
37 ties shall file with the arbitrator, with a copy
38 to the opposing party, its statement of last best
39 offer setting forth, in numbered paragraphs cor-
40 responding to the statement of unresolved issues
41 contained in the arbitration statement, the final
42 agreement proposed by that party. Within 20 days
43 after the last day for filing the statements of
44 last best offer, the arbitrator shall issue his
45 decision on all unresolved issues set forth in
46 the arbitration statement. A copy of the deci-
47 sion shall be distributed to each party and to

1 the executive director. The arbitrator shall
2 treat each unresolved issue set forth in the ar-
3 bitration statement as a separate question to be
4 decided by him. In deciding each economic issue,
5 the arbitrator shall accept the final provision
6 relating to such unresolved issue as contained in
7 the statement of last best offer of one party or
8 the other party. In deciding all other ques-
9 tions, the arbitrator shall accept the final pro-
10 vision relating to such unresolved issue as con-
11 tained in the statement of last best offer of one
12 party or the other party, except when the arbi-
13 trator finds that a more equitable resolution of
14 the question may be reached by the arbitrator
15 writing a different provision than either party
16 offered on the question.

17 Within 10 days after the issuance of the
18 arbitrator's decision, the parties shall sign an
19 agreement binding each party to the decision, un-
20 less, within that 10-day period, the parties both
21 agree to a different agreement and execute that
22 agreement in the form of a binding contract.
23 When the final contract differs from the
24 arbitrator's decision, a copy of the contract
25 shall be forwarded to the executive director.

26 The arbitration hearing shall be conducted in ac-
27 cordance with the rules and procedures of the
28 American Arbitration Association. The hearing
29 shall be informal, and the rules of evidence pre-
30 vailing in judicial proceedings shall not be
31 binding. Any documentary evidence and other data
32 deemed relevant by the arbitrator may be received
33 in evidence. The fact finders' report will be in
34 all cases the first evidence received by the ar-
35 bitrator.

36 E. The arbitrator or each of the arbitrators, in
37 those cases where the parties have agreed to a
38 procedure requiring more than one arbitrator,
39 shall have the power to administer oaths and to
40 require by subpoena the attendance and testimony
41 of witnesses, and the production of books,
42 records and other evidence relative or pertinent
43 to the issues presented to them for determina-
44 tion.

1 F. The final decision of the arbitrator or arbit-
2 trators shall be subject to review by the Superi-
3 or Court in the manner specified by section 972.

4 G. In reaching a decision under this paragraph,
5 the arbitrator shall consider the following fac-
6 tors:

7 (1) The negotiations between the parties
8 prior to arbitration;

9 (2) The interests and welfare of the public
10 and financial ability of the governmental
11 unit to finance the cost items proposed by
12 each party to the dispute;

13 (3) Changes in the cost of living;

14 (4) The interests and welfare of the school
15 employee group;

16 (5) Comparison of the wages, hours and
17 working conditions, including, but not lim-
18 ited to, hazards of the job, of the employ-
19 ees involved in the arbitration proceeding
20 with the wages, hours and working conditions
21 of other employees performing similar ser-
22 vices in public and private employment in
23 other jurisdictions competing in the same
24 labor market;

25 (6) The overall compensation presently re-
26 ceived by the school employees, including
27 direct wage compensation, vacation, holidays
28 and excused time, insurance and pensions,
29 medical and hospitalization benefits, the
30 continuity and stability of employment and
31 all other benefits needed;

32 (7) Such other factors not confined to this
33 paragraph which are normally and
34 traditionally taken into consideration in
35 the determination of wages, hours and work-
36 ing conditions through voluntary collective
37 bargaining, mediation, fact finding, arbi-
38 tration or otherwise between the parties in
39 the public service or in private employment,

1 including wage and price statistics compiled
2 by the State Government or Federal Govern-
3 ment;

4 (8) The need of the public employer for
5 qualified school employees;

6 (9) Conditions of employment in similar oc-
7 cupations outside the governmental unit;

8 (10) The need to maintain appropriate rela-
9 tionships between different occupations in
10 the governmental unit; and

11 (11) The need to establish fair and reason-
12 able conditions in relation to job qualifi-
13 cations and responsibilities.

14 H. Nothing in this subsection in any way limits
15 or restricts the right of school employees and
16 their employers to arbitrate issues that arise
17 under a contract, that is, so-called grievance
18 arbitration.

19 STATEMENT OF FACT

20 When the Legislature gave public employees the
21 right to organize and bargain collectively, it spe-
22 cifically denied those same employees the right to
23 strike. In place of strike as a means of encouraging
24 dispute resolutions, the law established a 3-stepped
25 process of dispute resolutions: Mediation, fact
26 finding and arbitration. Arbitration currently is
27 not binding on wages, pensions and insurance which
28 are defined as economic issues in this bill.

29 While the state's public bargaining laws have
30 generally worked very well, in some instances the
31 lack of a more powerful incentive to agree has caused
32 employees to be without a contract for periods of 2
33 years or more. This bill addresses that shortcoming
34 for school employees by making arbitration fully
35 binding on both parties.

36 There are several safeguards built into the bill
37 to assure that binding arbitration will only be used

1 as a final resort and not as the standard means of
2 contract resolution. The bill authorizes arbitration
3 to begin only after fact finding, followed by 45 days
4 to come to an agreement. Only school employees are
5 covered by this bill.

6 The means of arbitration on economic questions is
7 so-called "item-by-item last best offer," the means
8 that experts on labor law believe causes the greatest
9 incentive to both parties to come to an agreement and
10 not resort to arbitration.

11 This bill amends only the Municipal Public Em-
12 ployees Labor Relations Act.

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