

# MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 19, 1976

To Lawrence J. Thebeau, Chairman

Dept. Board of Arbitration and Conciliation

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject: State employees or teachers as public members of the Board of Arbitration and Conciliation

This responds to your oral request for an opinion. In that request for an opinion you basically asked: may a teacher, including University teachers, or a state employee be a public member of the Board of Arbitration and Conciliation.

Answer:

It is not possible to definitively respond to this question. The capacity of an individual teacher or state employee to serve on the Board of Arbitration and Conciliation would depend on an evaluation of the facts and the status of that state employee or teacher as either an employer, an employee, or someone who could reasonably be presumed to be independent of interests intended to be represented by employer or employee representatives on the Board.

Discussion:

Response to this question requires interpretation of 26 M.R.S.A. § 911. Section 911 specifies the establishment of a three-member Board of Arbitration and Conciliation, one member to be an employer of labor and another to be an employee or an employee selected from some bona fide trade or labor union. The third member, who becomes chairman of the Board, is designated as a person to "represent the public interest of the state." In addition, § 911 provides for appointment of six alternate members with two members to serve from each of the above categories. Thus, this question relates to whether state employees or teachers may be appointed to the one public position and two alternate public positions on the Board. The Board's responsibilities include general responsibility to arbitrate labor disputes in the private sector and, in addition, specific authority to participate in labor disputes in the public sector. Cf. 26 M.R.S.A. § 965, sub-§§ 4 through 6; 26 M.R.S.A. § 979-D, sub-§§ 4 and 5; 26 M.R.S.A. § 1026, sub-§§ 4 and 5.

The public member and public alternates on the Board are intended to be persons whose interests are separate and distinct from that of either the designated employer or employee representatives on the Board. In addition, one of the reasons for providing alternates is to allow the public member to withdraw in situations of potential conflict of interest.

As the Board may be involved in disputes involving both teachers and state employees, it must be assumed that persons representative of certain teachers and state employees qualify for Board membership under the employer or employee categories. However, not all state employees or teachers would necessarily fall in either the employer or employee category. For example, there may be some state employees who do not exercise supervisory responsibilities such as to place them in an employer category, while at the same time being exempt from the employee category as specified in § 979-A-6. The same circumstances may apply to persons normally designated teachers. Thus,

Lawrence J. Thebeau, Chairman

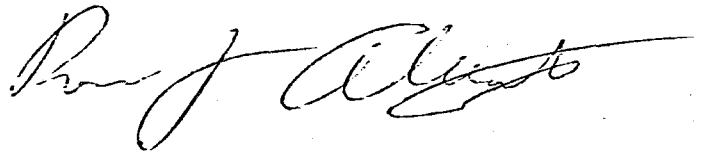
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when a question arises regarding the potential appointment of a state employee or a teacher to the State Board of Arbitration and Conciliation, the particular facts of that employees job related responsibilities must be examined to determine if that employee is appropriately in either the employer or employee category. Should the person in question be either in the employer or employee category, that person probably would not be eligible to serve as a public member. Thus each case must be looked at on its facts.

As to state employees, we would note further that there may be other reasons, not related to the provisions of the labor relations laws, which may prevent certain state employees from serving as a member of the Board of Arbitration and Conciliation. For example, employees who are prohibited from serving in more than one office in state government.

DGA:jg

A handwritten signature in cursive script, appearing to read "Lawrence J. Thebeau". The signature is written in dark ink and is positioned to the right of the typed text.