

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 13, 1981

The Honorable Donald R. O'Leary
State Senator
State House
Augusta, Maine 04333

Dear Senator O'Leary:

This is in response to your questions regarding the effect of 26 M.R.S.A. § 9 on the situation which exists relative to the recent negotiations involving the benefits/pension plan for currently retired employees of Boise Cascade Paper Company.^{1/}

I think your questions may be answered by stating that my research, including a review of the legislative history of 26 M.R.S.A. § 9, reveals that the statute was intended to permit, but not require, the parties to collective bargaining to negotiate about benefits to retired employees. Therefore, under the statute, retirees' benefits are a permissive topic of collective bargaining, not a mandatory topic, and the parties are free to negotiate about them or not, as they choose. This is consistent with the United States Supreme Court holding in Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971),

1/ 26 M.R.S.A. § 9 provides as follows:

Employee organizations, unions and bargaining agents in the private sector engaged in collective bargaining with employers may negotiate on behalf of retired and retired disabled former employees of the employer with respect to pensions, retirement benefits and other benefits which, as a part of wages and benefits related to employment, are, were or may be carried with retired employees into retirement.

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that benefits for retired employees are not a mandatory topic of collective bargaining under the National Labor Relations Act.

Your first question is whether the union and employer are to bargain on behalf of retired employees at the time of contract negotiations for active employees or at some other time. Title 26 M.R.S.A. § 9 does not deal with the issue of when negotiations regarding benefits for retired employees may take place; it simply states that such negotiations may take place.

Your second question is what remedy is available to the retired employees if either the union or the company refuses to bargain about retirees' benefits. Since both 26 M.R.S.A. § 9 and federal law establish retirees' benefits as a permissive topic of collective bargaining, either the union or the company may refuse to bargain about retirees' benefits without violating the Maine statute or federal labor law. There appears to be no remedy available to retired employees under 26 M.R.S.A. § 9.

Your third question is what is the effect of the NLRA on the Maine statute. As the statute is consistent with the current U.S. Supreme Court interpretation of the NLRA (see Chemical Workers v. Pittsburg Plate Glass, above), it does not appear that the NLRA would alter the Maine statute. However, if the Maine statute were amended in an attempt to make retirees' benefits a mandatory topic of collective bargaining, such an amendment would appear to be in conflict with federal law, and it is likely that problems of preemption would arise.

I hope this response is helpful. If I can be of further assistance, please let me know.

Very truly yours,


PETER H. STEWART
Assistant Attorney General

PHS:ks