

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 547

H. P. 420

House of Representatives, February 3, 1971

Referred to Committee on Labor. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Bustin of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Amend the Municipal Public Employees Labor Relations Law.

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

Sec. 1. R. S., T. 26, § 964, sub-§ 1, ¶ B, amended. Paragraph B of subsection 1 of section 964 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; **provided that nothing in this chapter shall preclude a public employer from making an agreement with an employee organization, not established, maintained, or assisted by any action defined in paragraph C as a prohibited act, to require as a condition of employment membership therein, or payment thereto of the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership, on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later, if such employee organization is the bargaining agent, as defined in section 962, subsection 2, in the appropriate collective bargaining unit covered by such agreement when made, and unless following an election held as provided in section 967, subsection 3 within one year preceding the effective date of such agreement, the commissioner shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such employee organization to make such an agreement;**

Sec. 2. R. S., T. 26, § 964, sub-§ 2, ¶¶ D and E, additional. Subsection 2 of section 964 of Title 26 of the Revised Statutes, as enacted by section 1 of

chapter 424 of the public laws of 1969, is amended by adding 2 new paragraphs D and E, to read as follows:

D. Causing or attempting to cause a public employer to discriminate against an employee in violation of subsection 1, paragraph B or to discriminate against any employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

E. Failing to fairly represent all the public employees in the bargaining unit for which it is the bargaining agent as that term is defined in section 962, subsection 2.

Sec. 3. R. S., T. 26, § 965, sub-§ 1, ¶ C, repealed and replaced. Paragraph C of subsection 1 of section 965 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is repealed and the following enacted in place thereof:

C. To confer and negotiate in good faith with respect to wages, hours, terms and conditions of employment and contract grievance arbitration except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies. For the purpose of this paragraph, educational policies shall not include wages, hours, working conditions or contract grievance arbitration;

Sec. 4. R. S., T. 26, § 965, sub-§ 3, amended. The first sentence of the 3rd paragraph of subsection 3 of section 965 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

The parties shall have a period of 30 days, after the ~~receipt~~ mailing of findings and recommendations from the fact finders, in which to make a good faith effort to resolve their controversy.

Sec. 5. R. S., T. 26, § 965, sub-§ 4, amended. The first paragraph of subsection 4 of section 965 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

In addition to the 30-day period referred to in subsection 3, the parties shall have 15 more days, making a total period of 45 days from the ~~receipt~~ mailing of findings and recommendations, in which to make a good faith effort to resolve their controversy.

Sec. 6. R. S., T. 26, § 965, sub-§ 5, amended. The first sentence of subsection 5 of section 965 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator including, if any, per diem expenses, and

actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding or arbitration proceedings are conducted, will be shared equally by the parties to the ~~arbitration~~ proceedings.

Sec. 7. R. S., T. 26, § 966, amended. The 2nd sentence of section 966 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

In determining whether a supervisory position should be excluded from ~~coverage under this chapter~~ a bargaining unit, the commissioner shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing ~~the provisions of a collective bargaining agreement~~ or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.

Sec. 8. R. S., T. 26, § 967, sub-§ 2, amended. The first sentence of the 4th paragraph of subsection 2 of section 967 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is repealed and the following enacted in place thereof:

No question concerning unit or representation may be raised in any bargaining unit or in a subdivision thereof in which during the preceding 12-month period a valid election shall have been held.

Sec. 9. R. S., T. 26, § 967, sub-§ 3, additional. Section 967 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, and as amended, is further amended by adding a new subsection 3, to read as follows:

3. Special union security election. Upon the filing with the commissioner, by 30% or more of the employees in a bargaining unit covered by an agreement between their employer and an employee organization made pursuant to section 964, subsection 1, paragraph B, of a petition alleging the desire that such authority be rescinded, the commissioner shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such employee organization and to the public employer. No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election shall have been held.

Sec. 10. R. S., T. 26, § 970, repealed and replaced. Section 970 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 970. Grievance arbitration

A collective bargaining agreement between a public employer and a bargaining agent may provide for binding arbitration as the final step of a

grievance procedure. Such agreements shall be enforceable pursuant to the Uniform Arbitration Act, Title 14, chapter 706. The decision of an arbitrator or arbitration panel acting pursuant to such agreement to arbitrate grievances shall be subject to review in accordance with the Uniform Arbitration Act.

Sec. 11. R. S., T. 26, § 972, repealed and replaced. Section 972 of Title 26 of the Revised Statutes, as enacted by section 7 of chapter 578 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 972. Review

Either party may seek a review by the Superior Court of a binding determination by an arbitrator or arbitration panel acting pursuant to the provisions of section 965, subsection 4, or a decision of the Public Employees Labor Relations Appeal Board. Such review shall be sought in accordance with Rule 80 B of the Rules of Civil Procedure.

The binding determination of an arbitration panel or arbitrator acting pursuant to the provisions of section 965, subsection 4 or the decision of the Public Employees Labor Relations Appeal Board, in the absence of fraud, shall be final upon all questions of fact. The court may, after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous conclusion of law. An appeal may be taken to the law court as in any civil action.

STATEMENT OF FACT

The purpose of this bill is to clarify and correct inconsistencies in the Municipal Public Employees Labor Relations Law.