

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 2007

H. P. 1548

Committee on Labor suggested.

House of Representatives, January 24, 1972

BERTHA W. JOHNSON, Clerk

Presented by Mrs. Lincoln of Bethel.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-TWO

**AN ACT to Provide for Administrative Enforcement of 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, § 962, sub-§ 1, amended. Subsection 1 of section 962 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:

1. **Board.** "~~Appeals board~~ **Board**" means the Public Employees Labor Relations ~~Appeals Board~~ referred to in section 968.

Sec. 2. R. S., T. 26, § 964, sub-§ 3, repealed and replaced. Subsection 3 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section 964 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is repealed and the following enacted in place thereof:

3. **Violations.** Violations of this section shall be processed by the board in the manner provided in section 968, subsection 5.

Sec. 3. R. S., T. 26, § 965, sub-§ 3, amended. The 2nd 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:

If the parties do not jointly agree to call upon the Maine Board of Arbitration and Conciliation or to pursue some other procedure, either party to the controversy may request the ~~commissioner~~ **executive director** to assign a fact-finding ~~board panel~~. If so requested, the ~~commissioner~~ **executive director** shall appoint a fact-finding ~~board panel~~, ordinarily of 3 members, in accordance with rules and procedures prescribed by the ~~commissioner~~ **board** for making such

appointment. The fact-finding ~~board panel~~ shall be appointed from a list maintained by the ~~commissioner board~~ and drawn up after consultation with representatives of state and local government administrators, agencies with industrial relations and personnel functions and representatives of employee organizations and of employers. Any person who has actively participated as the mediator in the immediate proceedings for which fact-finding has been called shall not sit on that fact-finding ~~board panel~~. The ~~board panel~~ shall hear the contending parties to the controversy. It may request statistical data and reports on its own initiative in addition to the data regularly maintained by the commissioner. The members of the fact-finding ~~board panel~~ shall submit their findings and recommendations to the parties only.

Sec. 4. R. S., T. 26, § 966, amended. Section 966 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969 and amended by section 3 of chapter 578 of the public laws of 1969, is further amended to read as follows:

§ 966. Bargaining unit; how determined

In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the ~~commissioner executive director of the board~~ shall make the determination, except that anyone excepted from the definition of public employee under section 962 may not be included in a bargaining unit. In determining whether a supervisory position should be excluded from coverage under this chapter, the ~~commissioner executive director of the board~~ 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. Nothing in this chapter is intended to require the exclusion of principals, assistant principals, other supervisory employees from school system bargaining units which include teachers and nurses in supervisory positions.

The ~~commissioner executive director of the board~~ shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof and no unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, except that teachers may be included in a unit consisting of other certificated employees.

Sec. 5. R. S., T. 26, § 967, sub-§ 2, amended. The first 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 amended to read as follows:

The ~~commissioner~~ **executive director of the board** upon signed request of a public employer alleging that one or more public employees or public employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of public employees, or upon signed petition of at least 30% of a bargaining unit of public employees that they desire to be represented by an organization, shall conduct a secret election to determine whether the organization represents a majority of the members in the bargaining unit.

Sec. 6. R. S., T. 26, § 967, sub-§ 2, amended. The last 2 sentences of the 2nd paragraph of subsection 2 of section 967 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 and amended by section 4 of chapter 578, both of the public laws of 1969, are further amended to read as follows:

When an organization receives the majority of votes of those voting, the ~~commissioner~~ **executive director of the board** shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the ~~commissioner~~ **executive director of the board** as not representing a majority of the unit.

Sec. 7. R. S., T. 26, § 967, amended. The next to the last paragraph 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 amended to read as follows:

The bargaining agent certified by the ~~commissioner~~ **executive director of the board** as the exclusive bargaining agent shall be required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, provided that any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance.

Sec. 8. R. S., T. 26, § 967, amended. The last paragraph 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.

Sec. 9. R. S., T. 26, § 968, repealed and replaced. Section 968 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969 and as amended by sections 5-A, 6 and 6-A of chapter 578 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 968. Public Employees Labor Relations Board; powers and duties

1. **Public Employees Labor Relations Board.** The Public Employees Labor Relations Board shall consist of 3 members to be appointed by the Governor, with the advice and consent of the Council. The Governor, in making his appointments, shall name one member to represent public employees, one to represent public employers and the 3rd member to represent the public, who shall be the board's chairman. Members of the board shall each receive \$50 a day for their services for the time actually employed in the discharge of their official duties. The term of each member shall be for a period of 4 years; provided that of the members first appointed, one member shall be appointed for a period of 4 years, one member shall be appointed for a period of 3 years and one shall be appointed for a period of 2 years. The members of the board shall receive necessary expenses on the approval of the Commissioner of Labor and Industry.

2. **Executive director.** An Executive Director of the Public Employees Labor Relations Board shall be appointed by the board to serve at their will and pleasure. The person so appointed shall be trained in the law and experienced in the field of labor relations. He shall perform the duties designated by statute and such other duties as shall from time to time be assigned to him by the board. He shall serve as secretary of the board and shall maintain a record of all proceedings before the board. The executive director shall receive such salary as shall be fixed by the Governor and Council. No board members shall serve as executive director.

3. **Rule-making power.** The board from time to time shall adopt such rules of procedure as it deems necessary for the orderly conduct of its business and for carrying out the purposes of sections 966 and 967. Such rules shall be published and made available to all interested parties. The board shall also, upon its own initiative or upon request, issue interpretative rules interpreting the provisions of this chapter. Such interpretative rules shall be advisory only and shall not be binding upon any court. Such interpretative rules must be in writing and available to any person interested therein.

4. **Review of representative proceedings.** Any party aggrieved by any ruling or determination of the executive director under sections 966 and 967 may appeal, within 15 days of the announcement of the ruling or determination, to the Public Employees Labor Relations Board.

Upon receipt of such an appeal the board shall within a reasonable time hold a hearing having first caused 7 days notice in writing of the time and place of such hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. Such hearings shall be conducted in the manner provided in subsection 5, paragraph B. Within a reasonable time after the conclusion of any hearing the board shall make a written decision which shall include findings of fact and shall either affirm or modify the ruling or determination of the executive director and specify the reasons for such action. A copy of such decision shall be mailed to the labor organization or bargaining agent or its attorney or other designated representative and the public employer. Decisions of the board made pursuant to this subsection shall be subject to review by the Superior Court in the manner specified in section 972.

5. Prevention of prohibited acts.

A. The board is empowered, as provided, to prevent any person, any public employer, any public employee, any public employee organization, or any bargaining agent from engaging in any of the prohibited acts enumerated in section 964. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

B. Any public employer, any public employee, any public employee organization or any bargaining agent which believes that any person, any public employer, any public employee, any public employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. Upon receipt of such complaint the executive director shall cause a copy thereof to be served upon the party complained of and shall serve upon said party and upon the party complaining a notice of hearing before the board, said notice shall designate the place of hearing and shall be served not less than 7 days prior to said hearing, provided that no hearing shall be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of shall have the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board any other person or organization may be allowed to intervene in said proceeding and to present testimony.

C. After hearing and argument if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon such party an order requiring such party to cease and desist from such prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

After hearing and argument if, upon a preponderance of the evidence received, the board shall not be of the opinion that the party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue an order dismissing said complaint.

D. If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, such party fails to comply with the order of the board then the party in whose favor the order operates may file a civil action in the Superior Court in the county in which the prohibited practice was found to have occurred, to compel compliance with the order of the board. In such action the Superior Court shall not

review the action of the board other than to determine whether the board has acted in excess of its jurisdiction. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

E. Whenever a complaint is filed with the executive director of the board, alleging that a public employer has violated section 964, subsection 1, paragraph F or alleging that a public employee or public employee organization or bargaining agent has violated section 964, subsection 2, paragraph C the party making the complaint may simultaneously seek injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to such matter.

F. Decisions of the board shall be subject to review by the Superior Court in the county in which the prohibited practice was found to have occurred in the manner specified in section 972.

G. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction.

6. Hearings. The hearings conducted by the board pursuant to this section shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

7. Reports. The board shall annually, on or before the first day of July, make a report to the Governor and Council which shall be incorporated in and printed with the biennial report of the department. The appropriation for the board and the executive director shall be included in the department's budget and authorization for expenditures shall be the responsibility of the commissioner.

The board shall have the authority to recommend to the Legislature changes or additions to this chapter or to related enactments of law.

Sec. 10. R. S., T. 26, § 971, repealed and replaced. Section 971 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:

§ 971. Suits by and against unincorporated employee organizations

In any judicial proceeding brought under this chapter or to enforce any of the rights guaranteed by this chapter, any unincorporated employee organization may sue or be sued in the name by which it is known.

Sec. 11. Appropriation. There is appropriated from the General Fund to the Department of Labor and Industry to carry out the purposes of this Act the sum of \$36,675. The breakdown shall be as follows:

	1971-72	1972-73
LABOR AND INDUSTRY, DEPARTMENT OF:		
Municipal Public Employees		
Labor Relations		
Personal Services	(4) \$450	(5) \$29,000
All Other	150	6,000
Capital Expenditures	75	1,000
	\$675	\$36,000

STATEMENT OF FACT

A Labor Relations Board is sorely needed to provide the services to the parties who are covered by the Municipal Public Employees Labor Relations Law.

The present law was adopted at the 104th session of the Legislature with the administrative responsibility, plus the ruling on unit determination disputes and the conduct of certification elections added to the duties of the Commissioner of Labor and Industry. At that time, no one could estimate the work load that was placed in the hands of the Commissioner of Labor and Industry. The demands for services have required nearly a half of the Commissioner's time. That, with the traditional responsibilities, has meant that she had not sufficient time to keep abreast of developments and decisions in other jurisdictions.

There are additional needs that she has not been able to meet, namely, educational programs and consultation with the various parties at interest. Labor relations and collective bargaining, being such a new field for municipal officers, school boards and organizations of employees, could profit by such service.

Finally, the present law provides that prohibited practice complaints must be taken to the courts. This causes delay and confusion to the detriment of good labor-management relations. The board, as provided in this Act, would be able to rule on such complaints, and if the parties are not satisfied they would have a right of appeal to the courts.

We need a more sophisticated service to the parties if we are to prevent dissension and discontent and are to achieve the purposes of the original Act, i.e., to provide good labor relations for those governed by the Act.