

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2314

S. P. 817

In Senate, January 8, 1974

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Extending Collective Bargaining Rights to State Employees.

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

R. S., T. 26, c. 9-B, additional. Title 26 of the Revised Statutes is amended by adding a new chapter 9-B, to read as follows:

CHAPTER 9-B

STATE EMPLOYEES LABOR RELATIONS ACT

§ 979. Purpose

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between the State of Maine and its employees by providing a uniform basis for recognizing the right of state employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment.

§ 979-A. Definitions

As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings:

1. Bargaining agent. "Bargaining agent" means any lawful organization, association or individual representative of such organization or association which has as its primary purpose the representation of employees in their employment relations with employers, and which has been determined by the public employer as defined in subsection 5 or by the executive director

of the board to be the choice of the majority of the unit as their representative.

2. Board. "Board" means the Public Employees Labor Relations Board as defined in section 968, subsection 1.

3. Cost items. "Cost items" means the provisions of a collective bargaining agreement which requires an appropriation by the Legislature.

4. Executive director. "Executive director" means the Executive Director of the Public Employees Labor Relations Board as defined in section 968, subsection 2.

5. Public employer. "Public employer" means all the departments, agencies and commissions of the executive branch of the State of Maine, represented by the Governor or his designee. In the furtherance of this chapter, the State shall be considered as a single employer and employment relations, policies and practices throughout the state service shall be as consistent as practicable. It is the responsibility of the executive branch to negotiate collective bargaining agreements and to administer such agreements. To coordinate the employer position in the negotiation of agreements, the Legislative Council or its designee shall maintain close liaison with the Governor or his designee representing the executive branch relative to the negotiation of cost items in any proposed agreement. The Governor's office or its designee is responsible for the employer functions of the executive branch under this chapter, and shall coordinate its collective bargaining activities with operating agencies on matters of agency concern. It is the responsibility of the legislative branch to act upon those portions of tentative agreements negotiated by the executive branch which require legislative action.

6. State employee. "State employee" means any employee of the State of Maine performing services within the executive department except any person:

A. Elected by popular vote; or

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term by the Governor or by a department head or body having appointive power within the executive department; or

C. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the Governor, a department head or body having appointive power within the executive department; or

D. Who is a department or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the Governor or by a body having appointive power within the executive department; or

E. Who has been employed less than 6 months; or

F. Who is a temporary, seasonal or on-call employee; or

G. Who is serving as a member of the State Militia or National Guard.

§ 979-B. Right of state employees to join labor organizations

No one shall directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against state employees or a group of state employees in the free exercise of their rights, hereby given, voluntarily to join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining, or in the free exercise of any other right under this chapter.

§ 979-C. Prohibited acts of the public employer, state employees and state employee organizations

1. Public employer prohibitions. The public employer, its representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 979-B;

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;

C. Dominating or interfering with the formation, existence or administration of any employee organization;

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter;

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 979-D;

F. Blacklisting of any employee organization or its members for the purpose of denying them employment.

2. State employee prohibitions. State employees, State employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 979-B or the public employer in the selection of its representative for purposes of collective bargaining or the adjustment of grievances;

B. Refusing to bargain collectively with the public employer as required by section 979-D;

C. Engaging in:

(1) A work stoppage;

(2) A slowdown;

(3) A strike; or

(4) The blacklisting of the public employer for the purpose of preventing it from filling employee vacancies.

3. Violations. Violations of this section shall be processed by the board in the manner provided in section 979-H.

§ 979-D. Obligation to bargain

1. Negotiations. It shall be the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

A. To meet at reasonable times;

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided the parties have not otherwise agreed in a prior written contract;

C. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed 2 years; and

D. To participate in good faith in the mediation, fact finding and arbitration procedures required by this section;

E.

(1) To confer and negotiate in good faith with respect to wages, hours, working conditions 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. All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining, except those matters which are prescribed or controlled by public law. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by public law include but are not limited to:

(a) Wage and salary schedules to the extent they are inconsistent with rates prevailing in commerce and industry for comparable work within the State;

(b) Work schedules relating to assigned hours and days of the week;

(c) Use of vacation or sick leave, or both;

(d) General working conditions;

(e) Overtime practices;

(f) Rules and regulations for personnel administration, except the following: Rules and regulations relating to applicants for employment in state service and classified employees in an initial probationary status, including any extensions thereof, provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex or national origin.

(2) Paragraph E subparagraph (1) shall not be construed to be in derogation of or contravene the spirit and intent of the merit system principles and personnel laws.

(3) Cost items shall be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, all cost items submitted shall be returned to the parties for further bargaining.

2. Mediation.

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and employees or their representatives through mediation.

B. Mediation procedures as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Public Employees Labor Relations Board or its executive director.

C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Public Employees Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions.

D. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged.

3. Fact-finding.

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Board of Arbitration and Conciliation for fact-finding services with recommendations or to pursue some other mutually acceptable fact-finding procedure.

B. 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 executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making such appointments.

C. The fact-finding proceedings shall be as provided by section 965, subsection 3.

4. Arbitration

A. In addition to the 30-day period referred to in section 965, subsection 3, the parties shall have 15 more days, making a total of 45 days from the submission of findings and recommendations, in which to make a good faith effort to resolve their controversy.

B. If the parties have not resolved their controversy by the end of said 45-day period, either party may petition the board to initiate compulsory final and binding arbitration of the negotiations impasse. On receipt of the petition, the executive director of the board shall investigate to determine if an impasse has been reached. If he so determines, he shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties within 10 days after the issuance of the order have not selected an arbitrator or a Board of Arbitration, the board shall then order each party to select one arbitrator, and if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the board shall submit a list from which the parties may alternately strike names until a single name is left, who shall be appointed by the board as arbitrator.

C. Within 7 days after the selection or appointment of an arbitrator, the parties shall submit to him their final offer in effect at the time that the petition for final and binding arbitration was filed. Either party may amend its final offer until such time as the arbitrator or arbitrators shall declare the hearing terminated. The arbitrator or arbitrators shall select the final offer of one of the parties or the findings and recommendations of the fact-finding panel submitted in accordance with subsection 3 and shall issue an award incorporating one of the offers or the findings and recommendations without modification.

D. In reaching a decision under this paragraph, the arbitrator shall consider the following factors:

(1) The interests and welfare of the public and the financial ability of the State Government to finance the cost items proposed by each party to the impasse;

(2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the wages, hours and working conditions of other employees performing similar services in public and private employment in other jurisdictions competing in the same labor market;

(3) The over-all compensation presently received by the employees including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

(4) Such other factors not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment, including the average consumer price index;

(5) The need of State Government for qualified employees;

(6) Conditions of employment in similar occupations outside State Government;

(7) The need to maintain appropriate relationships between different occupations in State Government;

(8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities.

E. With respect to controversies over salaries, pensions and insurance, the arbitrator will recommend terms of settlement and may make findings of fact. Such recommendations and findings shall be advisory and shall not be binding upon the parties. The determination by the arbitrator on all other issues shall be final and binding on the parties.

F. The arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless the aforesaid time limitation shall be extended by the executive director.

5. Costs. The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator or arbitrators 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 proceedings. All other costs will be assumed by the party incurring them. The services of the members of the State's Panel of Mediators and of the Maine Board of Arbitration and Conciliation are available to the parties without cost.

§ 979-E. Bargaining unit; how determined

1. 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 executive director shall make the determination, except that anyone excepted from the definition of state employee under section 979-A may not be included in a bargaining unit. In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director 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 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.

2. In order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to insure a clear and identifiable community of interest among employees concerned, and to avoid excessive fragmentation among bargaining units in State Government, the executive direc-

tor of the board shall decide in each case the unit appropriate for purposes of collective bargaining.

§ 979-F. Determination of bargaining agent

1. Voluntary recognition. Any state employee organization may file a request with the public employer alleging that a majority of the state employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the public employer unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

2. Elections.

A. The executive director of the board upon signed request of a public employer alleging that one or more state employees or state employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of state employees, or upon signed petition of at least 30% of a bargaining unit of state 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 of the bargaining unit.

B. The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the state employees within the unit, together with a choice for any state employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the state employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and second-largest number of votes. When an organization receives the majority of votes of those voting, the 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 executive director of the board as not representing a majority of the unit.

C. Whenever 30% of the employees in a certified bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth.

D. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question concerning unit or repre-

sentation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement.

E. The bargaining agent certified by the 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.

3. Service fee; withholding

A. Nothing in this chapter shall preclude a labor organization that is the certified bargaining agent from entering into an agreement with the employer whereby, during the life of a collective bargaining agreement so providing, the State Controller shall deduct from each payment of salary made to each employee within the bargaining unit represented by the certified bargaining agent and pay over to said agent, as an agency service fee, such sum, proportionately commensurate with the cost of collective bargaining and contract administration, as the collective bargaining agreement shall state; provided that such collective bargaining agreement shall first have been formally executed pursuant to a vote of a majority of all employees in the bargaining unit.

B. If the collective bargaining agreement provides for the deduction of an agency service fee and fails to specify the amount of such fee, the board shall determine the amount of such fee; provided that such fee shall be reasonable and shall not be an amount that exceeds the regular and usual dues of the employees within the bargaining unit who are members of the labor organization.

C. If a labor organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction shall terminate.

§ 979-G. Rule making procedure and review of proceedings

1. Rule making procedure. Proceedings conducted under this chapter shall be subject to the rules and procedures of the board promulgated under section 968, subsection 3.

2. Review of representation proceedings. Any person aggrieved by any ruling or determination of the executive director under sections 979-E and 979-F 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 and the procedures established in furtherance thereof shall be in accordance with section 968.

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.

§ 979-H. Prevention of prohibited acts

1. The board is empowered, as provided, to prevent any person, the public employer, any state employee, any state employee organization or any bargaining agent from engaging in any of the prohibited acts enumerated in section 979-C. 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.

2. The public employer, any state employee, or state employee organization or any bargaining agent which believes that any person, the public employer, any state employee, any state 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 filing a complaint, the complaining party shall be responsible for service of a copy thereof, within 3 working days, upon the party against whom such charge is made. Upon receipt of such complaint, the executive director shall serve upon the complained-of party and upon the complaining party a notice of hearing before the board, said notice to designate the time and place of 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.

3. After hearing the 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.

4. 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.

5. If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, said 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 Kennebec County, to compel compliance with the order of the board. In such action to compel compliance, the Superior Court shall not review the action of the board other than to determine questions of law. 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.

6. Whenever a complaint is filed with the executive director of the board, alleging that the public employer has violated section 979-C, subsection 1, paragraph F or alleging that a state employee or state employee organization or bargaining agent has violated section 979-C, 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.

7. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Public Employees Labor Relations Board by filing a complaint in accordance with Rule 80B of the Maine Rules of Civil Procedure, provided the complaint shall be filed within 15 days of the effective date of the decision. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party of interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it deems just and proper; provided that the board's decision or order shall not be stayed, except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record shall include all documents filed in the proceeding and the transcript, if any. After hearing, which shall be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact shall be final unless shown to be clearly erroneous. Any appeal to the law court shall be the same as an appeal from an interlocutory order under section 6.

8. 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.

§ 979-I. Hearings

1. Hearings conducted by the board 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.

2. 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.

979-J. Reports

1. The board shall annually, on or before the first day of July, make a report to the Governor and Council. The appropriation for the board and the executive director shall be included in the budget of the Bureau of Labor and Industry and authorization for expenditures shall be the responsibility of the executive director.

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

§ 979-K. Grievance arbitration

An agreement between a bargaining agent and the public employer may provide for binding arbitration as the final step of a grievance procedure, provided that any such grievance procedure shall be exclusive and shall supersede any otherwise applicable grievance procedure provided by law. If no such provision is contained in the collective bargaining agreement, the parties shall submit their differences for resolution by the State Employees Appeals Board.

§ 979-L. 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.

§ 979-M. Review of arbitration awards

1. Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. Such review shall be sought in accordance with Rule 80B of the Maine Rules of Civil Procedure.

2. In the absence of fraud, the binding determination of an arbitration panel or arbitrator shall be final upon all questions of fact.

3. The court may, after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action.

STATEMENT OF FACT

The Municipal Public Employees Labor Relations Act, since its enactment in 1969, has contributed significantly to the improvement of labor relations

between municipal employees and local government, and teachers and school boards. By recognizing the rights of municipal employees and teachers to bargain collectively with their employers, and by providing a procedural and administrative framework within which this bargaining occurs, the Act responded to the legitimate aspirations of these public employees to participate more meaningfully in decisions affecting their wages, hours and working conditions, and provided a uniform basis for carving out the details of this shared authority.

The time has now come to extend these rights and this framework to state employees. Four years' experience with the current act has prepared the Public Employees Labor Relations Board to handle this new responsibility. State employees share with municipal employees and teachers the desire for a greater voice in establishing the terms of their employment. There is simply no fair or reasoned basis for continuing to deny to state employees the rights now enjoyed by municipal employees and teachers. Seventeen states, recognizing this fact, have now extended collective bargaining rights to their state employees.

This bill supplements the Municipal Public Employees Labor Relations Act to provide collective bargaining for state employees. The supplements address the issues of who should be the bargaining agent for the State (§979-A), the scope of bargaining for state employees (§979-D), unit determination (§979-E) and determination of bargaining agent (§979-F). The supplements also propose, as a major innovation, the use of final offer arbitration for impasse resolution in state employment (§979-E).