

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1130

H. P. 916

House of Representatives, March 19, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Garsoe of Cumberland.

Cosponsor: Mr. Snow of Falmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Improve Procedures under the State Employees Labor
Relations Act.

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

Sec. 1. 26 MRSA § 979-E, as enacted by PL 1973, c. 774, is amended to read:

§ 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 or his designee 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 or his designee 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 director of the board **or his designee** shall decide in each case the unit appropriate for purposes of collective bargaining.

Sec. 2. 26 MRSA § 979-F, sub-§ 2, ¶ **A**, as enacted by PL 1973, c. 774, is amended to read:

A. The executive director of the board **or his designee** 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 ballot election to determine whether the organization represents a majority of the members of the bargaining unit. **Such an election may be conducted at suitable work locations or through the United States mail provided, nevertheless, that the procedures adopted and employed by the Public Employees Labor Relations Board shall maintain the anonymity of the voter from both the employee organizations and the management representatives involved.**

Sec. 3. 26 MRSA § 979-F, sub-§ 2, ¶ **E**, as enacted by PL 1973, c. 774, is amended to read:

E. The bargaining agent certified by the executive director of the board **or his designee** 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. 4. 26 MRSA § 979-H, sub-§ 5, as enacted by PL 1973, c. 774, is amended to read:

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 **or the board** 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.

Sec. 5. 26 MRSA § 979-J, sub-§ 1, as enacted by PL 1973, c. 774, is amended to read:

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.~~ The board shall prepare a biennial budget for submission to the Legislature for appropriations sufficient to carry out its duties. Authorization for expenditures shall be the responsibility of the board. All expenses of the board and its staff, including all necessary travelling and subsistence expenses, shall be paid on presentation of itemized vouchers therefor approved by the board or the executive director.

Sec. 6. **Appropriation.** There is appropriated from the General Fund to the Public Employees Labor Relations Board the sum of \$40,400 to carry out the duties imposed under the law. The breakdown shall be as follows:

	1975-76		1976-77
PUBLIC EMPLOYEES LABOR RELATIONS BOARD			
Personal Services	(1) \$13,000	(1)	\$13,700
All Other	8,000		5,000
Capital Expenditures	700		—
	<hr/>		<hr/>
	\$21,700		\$18,700

STATEMENT OF FACT

This bill contains technical amendments allowing the executive director or a designee to conduct investigations into matters of unit determination standards and bargaining agent elections. This bill is necessary because of the increasing workload imposed upon the Public Employees Labor Relations Board and the necessity for the executive director to administer programs under both the Public Employees Labor Relations Act and the State Employees Labor Relations Act. The adoption of this recommendation will permit a designee to administer routine clerical and investigatory functions when scheduling conflicts arise. This bill also provides for both on-site and mail ballot voting procedures as a matter of cost efficiency in order to meet the requirement of extending voting rights to those persons who are eligible to vote under the terms of the State Employees Labor Relations Act and who are employed in greatly dispersed geographical work locations. This bill clarifies the authority for the Public Employees Labor Relations Board to initiate Superior Court action in order to compel compliance with its orders and directives. It further modifies the budgetary procedures of the Public Employees Labor Relations Board in a manner which is consistent with the reported recommendations of the Interstate Consulting Clearing-

house of the Council of State Governments as was submitted to the Governor and Council in June of 1974.

The appropriation request attached to this bill allows for the addition of one position for a Staff Attorney/Field Investigator to perform the necessary functions required in the areas of unit determinations, bargaining agent elections and unfair labor practices. It provides for the upgrading of an existing position to Clerk IV in order to meet the expanded record-keeping requirements imposed through the administration of the State Employees Labor Relations Act. The Personal Services Appropriation is essential since the Public Employees Labor Relations Board received no appropriation for the expanded services which it must render as the result of the passage of the State Employees Labor Relations Act in the Special Session of the 106th Legislature.

The appropriation proposal further contains \$700 for Capital Expenditures in the form of a desk, filing cabinet and clerical and dictating equipment which will be used by the person fulfilling the Staff Attorney/Field Investigator position. The "All Other" category contained in the appropriation for this bill is necessary in order to insure sufficient funds to conduct the balloting procedures under the State Employees Labor Relations Act, said procedures not being funded with the passage of that Act in 1974. The balloting process involves not only voting but preparation, mailing and posting of notices, field investigations and travel to and from the election sites (if mail balloting is not employed). Since more organizational activity and elections may be conducted in FY 76 than in FY 77, the appropriations for this activity are \$8,000 and \$5,000 for the respective fiscal years.