

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1166

S. P. 363

In Senate, March 21, 1975

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Marcotte of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Regulating Procedures under the Municipal Public Employees
Labor Relations Act.

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

Sec. 1. 26 MRSA § 962, sub-§ 4-A, as enacted by PL 1971, c. 620, § 13, is repealed.

Sec. 2. 26 MRSA § 965, sub-§ 2, ¶ A, as last repealed and replaced by PL 1973, c. 617, § 2, is amended to read:

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

Sec. 3. 26 MRSA § 965, sub-§ 2, ¶ E, 2nd sentence, as repealed and replaced by PL 1973, c. 617, § 2, is amended to read:

The executive director of the Public Employees Labor Relations Board, upon request of one or both of the parties to a dispute ~~between an employer and its employees~~ shall, or upon his own motion or motion of the Public Employees Labor Relations Board may, proffer the services of one or more members of the panel to be selected by him, to serve as mediator or mediators in such a dispute.

Sec. 4. 26 MRSA § 966, as last amended by PL 1973, c. 458, § 9, is repealed and the following enacted in place thereof:

§ 966. Bargaining unit; how determined

1. **Bargaining unit standards.** 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 public employee under section 962 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 employee 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. Nothing in this chapter is intended to require the exclusion of principals, assistant principals, or other supervisory employees from school system bargaining units which include teachers and nurses in supervisory positions.

2. **Bargaining unit compatibility.** The executive director of the board, or his designee, 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. 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. 26 MRSA § 967, sub-§ 2, first sentence, as amended by PL 1971, c. 609, § 5, is further amended to read:

The executive director of the board, or his designee, 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 ballot election to determine whether the organization represents a majority of the members in the bargaining unit.

Sec. 6. 26 MRSA § 968, sub-§ 1, last sentence, as repealed and replaced by PL 1973, c. 788, § 120, is amended to read:

The members of the board, ~~and the alternate alternates,~~ and its employees shall receive necessary expenses ~~on the approval of the Director of the Bureau of Labor and Industry.~~

Sec. 7. 26 MRSA § 968, sub-§ 3, first sentence, as last repealed and replaced by PL 1971, c. 609, § 9, is amended to read:

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~~ **this chapter.**

Sec. 8. 26 MRSA § 968, sub-§ 4, first sentence, as enacted by PL 1971, c. 609, § 9, is amended to read:

Any party aggrieved by any ruling or determination of the executive director, or his designee, 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.

Sec. 9. 26 MRSA § 968, sub-§ 5, ¶ B, 2nd sentence, as amended by PL 1973, c. 788, § 120-A, is further amended to read:

~~Upon receipt of such complaint, the executive director shall cause a~~ **No such complaint shall be filed with the executive director until the complaining party shall have served a copy thereof to be served upon the party complained of and after which the executive director shall serve upon said party and upon the party complaining the parties to the complaint** a notice of hearing before the board, said notice shall designate the 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.

Sec. 10. 26 MRSA § 968, sub-§ 5, ¶ D, first sentence, as amended by PL 1973, c. 533, § 1, is further amended to read:

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 of Kennebec County, to compel compliance with the order of the board.

Sec. 11. 26 MRSA § 968, sub-§ 7, as last amended by PL 1971, c. 620, § 13, is further amended to read:

7. Reports and budget. 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 bureau. The appropriation for the board and the executive director shall be included in the bureau's budget and authorization for expenditures shall be the responsibility of the 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 the presentation of itemized vouchers therefor approved by the board or the executive director.**

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

Sec. 12. 26 MRSA § 973 is enacted to read:

§ 973. Separability

If any clause, sentence, paragraph or part of this chapter or the application thereof to any person or circumstances shall, for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this chapter would have been adopted had such invalid provisions not been included.

STATEMENT OF FACT

Section 1 eliminates definitions which are vestigial to the administration of the Public Employees Labor Relations Board and is consistent with the 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.

Sections 2 and 3 relate to community disputes which are arising with increasing frequency between parties who are not bound by the technical and formal relationship of employer to employee. The amendment to section 965, subsection 2, permits the offering of the services of a mediator for the resolution of such disputes in a manner consistent with the public policy already set forth in section 965, subsection 2 of the Act.

Sections 4, 5 and 8 deal with technical amendments allowing the Executive Director or a designee to conduct investigations into matters of unit determination standards and bargaining agent elections. This amendment 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. Adoption of these recommendations will allow for a designee to administer certain clerical functions when scheduling conflicts arise.

Sections 6, 7, 10 and 11 of the legislative proposal involve technical amendments to improve the administrative efficiency of the Public Employees Labor Relations Board, its effectiveness to initiate Superior Court action in order to compel compliance with its orders and directives, and are consistent with the proposals contained in the foregoing report of the Interstate Consulting Clearing House of the Council of State Governments, as was referenced in section 1 of this Statement of Fact.

Section 9 is a technical proposal which clarifies ambiguities with respect to the service of a prohibited practice complaint as defined under the Public

Employees Labor Relations Act. This amendment will clarify the procedural sequence for processing such a complaint and will eliminate the procedural uncertainty for those persons who are not familiar with routine practice before the Public Employees Labor Relations Board.

Section 12 is a separability clause identical to that contained in the State Employees Labor Relations Act and is included herein to maintain the consistency of the 2 Acts.