

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
107TH LEGISLATURE

(Filing No. H-700)

COMMITTEE AMENDMENT "A" to H.P. 1371, L.D. 1780, Bill,
"AN ACT to Define the Responsibilities of the Bureau of Labor
and the Public Employees Labor Relations Board."

Amend said Bill by striking out everything after the
enacting clause and inserting in place thereof the following:

Sec. 1. 26 MRSa §§891-893 are enacted to read:

§891. Policy

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

§892. Panel

A panel of mediators, to consist of not less than 5 nor more than 10 impartial members, shall be appointed by the Governor, with the advice and consent of the Council, from time to time upon the expiration of the terms of the several members, for terms of 3 years. They shall be chosen by the Governor from a list, containing at least 5 times as many names as the number of persons to be chosen, supplied at least once a year by the Maine Labor Relations Board. Vacancies occurring during a term shall be filled for the unexpired term. Members of the panel shall each receive \$75 a day for their services, for the time actually employed in the discharge of their official duties and shall also receive their traveling and all other necessary expenses. The costs for services rendered and expenses incurred by the panel shall be paid by the State from an appropriation for said panel which shall be included in the budget of the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel shall be the responsibility of the Executive Director of the Maine Labor Relations Board.

§893. Invoking mediation services

Mediation procedures as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services and the Maine Labor Relations Board or its executive director finds that the dispute is subject to settlement through mediation and that it is in the public interest to mediate.

Sec. 2. 26 MRSA §911, 1st ¶, last 5 sentences, as last amended by PL 1971, c. 620, §13, are further amended to read:

~~The board shall hold a meeting on the 3rd Wednesday of September in each year and shall organize by choosing from its members a secretary. 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. They shall receive their traveling and all other necessary expenses, and the costs for services rendered and expenses incurred by the Board of Arbitration and Conciliation shall be paid by the State from an appropriation for said board which shall be included in the budget of the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by the Board of Arbitration and Conciliation shall be the responsibility of the executive director of the Maine Labor Relations Board who shall, annually, on or before the first of July, make a report of the activities of the Board of Arbitration and Conciliation to the Governor and Council. The board shall from time to time make such rules of procedure as it deems necessary, and 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 shall be included in the bureau's budget and authorization for expenditures shall be the responsibility of the director.~~

Sec. 3. 26 MRSA §915, 2nd ¶, is amended to read:

If, when such request or notification is received, it appears that as many as 10 employees persons are directly concerned therein, the board shall endeavor, by conciliation, to obtain an amicable settlement; failing that, endeavor to persuade such employer and employees to submit the matter to arbitration ~~by the board or a local board of arbitration.~~

Sec. 4. 26 MRSA §916, last ¶, as amended by PL 1971, c. 620, §13, is further amended to read:

The board shall hear all interested persons who come before it, advise the respective parties what ought to be done by either or both to adjust such controversy, and shall, when the case is finally settled, make a written report to the Governor and the Executive ~~direeter~~ Director of the Maine Labor Relations Board.

Sec. 5. 26 MRSA §917, 2nd ¶, is amended to read:

Upon receipt of the application for such inquiry, the ~~secretary~~ chairman, through the auspices of the Maine Labor Relations Board, shall give notice of time and place of hearing, and may, at the board's discretion, give public notice by publishing in at least one newspaper the time and place of the hearing.

Sec. 6. 26 MRSA §918 is amended to read:

§918. Submission to arbitration; decision

If the case cannot be settled through the process of conciliation, the interested parties may submit the case to arbitration by filing an arbitration application with the ~~secretary or chairman of the board~~ Maine Labor Relations Board.

The ~~secretary~~ chairman of the board shall forthwith after such filing give notice of the time and place of hearing to both parties.

Sec. 7. 26 MRSA §919, 3rd and 5th sentences are amended to read:

When the matter is submitted to arbitration by the board, said board shall investigate the matters in controversy, shall hear all interested persons who come before it, and make a written decision thereof which shall be recorded by the ~~secretary~~ chairman of the board.

Such notice may be given to the employees by posting it in 3 conspicuous places in the shop, factory, yard or other place where they work, and copy of such notice shall be filed with the ~~secretary or~~ chairman of the board.

Sec. 8. 26 MRSA §920, 4th sentence is amended to read:

The decision of said board shall be rendered within 10 days after the close of any hearing held by it and copies of the decision shall at once be forwarded to the parties to the contract of arbitration and a copy thereof shall be filed with the ~~secretary/Chairman to the State Board of Arbitration and Conciliation and with the Maine Labor Relations Board.~~ → of

Sec. 9. 26 MRSA §962, sub-§1, as last amended by PL 1971, c. 609, §1, is amended to read:

1. Board. "Board" means the Public-Employees Maine Labor Relations Board referred to in section 968.

Sec. 10. 26 MRSA §962, sub-§2-A, as enacted by PL 1971, c. 620, §13, is repealed.

Sec. 11. 26 MRSA §962, sub-§4-A, as enacted by PL 1971, c. 620, §13, is repealed.

Sec. 12. 26 MRSA §962, sub-§4-B, as enacted by PL 1973, c. 458, §2, is amended to read:

4-B. Executive director. "Executive director" means the Executive Director of the Public-Employees Maine Labor Relations Board.

Sec. 13. 26 MRSA §965, sub-§2, /, ^{¶¶ A and B,} as last repealed and replaced by PL 1973, c. 617, §2, are 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 and other disputes subject to settlement through mediation.

B. Mediation procedures shall be followed whenever either party to a controversy requests such services prior to arbitration, or, in the case of disputes affecting public employers, public employees or their respective representatives as defined, whenever requested by either party prior to arbitration or at any time on motion of the Public-Employees Maine Labor Relations Board or its executive director.

Sec. 14. 26 MRSA §965, sub-§2, ¶C, as last repealed and replaced by PL 1973, c. 617, §2, is repealed and the following enacted in place thereof:

C. A panel of mediators, to consist of not less than 5 nor more than 10 impartial members, shall be appointed by the Governor, with the advice and consent of the Council, from time to time upon the expiration of the terms of the several members, for terms of 3 years. They shall be chosen by the Governor from a list, containing at least 5 times as many names as the number of persons to be chosen, supplied at least once a year by the Maine Labor Relations Board. Vacancies occurring during a term shall be filled for the unexpired term. Members of the panel shall each receive \$75 a day for their services for the time actually employed in the discharge of their official duties and shall also receive their traveling and all other necessary expenses. The costs for services rendered and expenses incurred by the panel shall be paid by the State from an appropriation for said panel which shall be included in the budget of the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel shall be the responsibility of the Executive Director of the Maine Labor Relations Board.

Sec. 16. 26 MRSA §965, sub-§2, ¶D, as last repealed and replaced by PL 1973, c. 617, §2, is amended to read:

D. The employer, union or employees involved in collective bargaining shall notify the executive director of the Public Employees Maine 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.

Sec. 17. 26 MRSA §965, sub-§2, ¶E, 1st 3 sentences, as last repealed and replaced by PL 1973, c. 617, §2, are amended to read:

The executive director of the Public-Employees Maine Labor Relations Board shall serve as executive director of the Panel of Mediators. He shall annually, on or before the first^{day} of July make a report to the Governor and Executive Council. The executive director of the Public-Employees Maine 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~~ Maine 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. 18. 26 MRSA §965, sub-§3, as last amended by PL 1973, c. 458, §§4 and 5, is repealed and the following enacted in place thereof:

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 Labor Relations Board to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and Conciliation, or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations.

B. If the parties do not jointly agree to call upon the Maine Labor Relations Board ←

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 appointment. The fact-finding panel shall be appointed from a list maintained by the 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 panel. The 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 Bureau of Labor and Industry, and shall have the power to administer oaths and to require by subpoena the attendance and testimony

of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them. The members of the fact-finding panel shall submit their findings and recommendations only to the parties and to the Executive Director of the Maine Labor Relations Board.

C. The parties shall have a period of 30 days, after the submission of findings and recommendations from the fact finders, in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of said period, either party or the Executive Director of the Maine Labor Relations Board may, but not until the end of said period unless the parties otherwise jointly agree, make the fact-finding and recommendations public.

Sec. 19. 26 MRSA §965, sub-§4, last 2 sentences as enacted by PL 1973, c. 458, §7, are amended to read:

The results of all arbitration proceedings, recommendations and awards conducted under this section shall be filed with the ~~Public~~ Employees Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration proceeding, the arbitrator or the chairman of the arbitration panel will submit a report of his activities to the Executive Director of the ~~Public~~ Employees Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

Sec. 20. 26 MRSA §965, sub-§6 is enacted to read:

6. Arbitration administration. The cost for services rendered and expenses incurred by the Maine Board of Arbitration and Conciliation, as defined in section 911, shall be paid by the State from an appropriation for said Board of Arbitration and Conciliation which shall be included in the budget of the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation shall be the responsibility of the executive director.

Sec. 21. 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 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. 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.

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 non-professional 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. 22. 26 MRSA §967, sub-§2, /^{first sentence,} as last 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. 23. 26 MRSA §968, sub-§1, as last amended by PL 1973,

c. 788, §120, is repealed and the following enacted in place thereof:

1. Maine Labor Relations Board. The Maine Labor Relations Board shall consist of 3 members and 6 alternates to be appointed by the Governor, with the advice and consent of the Council. The Governor, in making his appointments, shall name one member and 2 alternates to represent employees, one member and 2 alternates to represent employers and one member and 2 alternates to represent the public. The member representing the public shall be the board's chairman and the alternate representing the public shall be an alternate chairman.

Members of the board shall each receive \$75 a day, except for the chairman who shall receive \$100 per day, for their

services for the time actually employed in the discharge of the official duties. The alternates shall be paid at the same per diem rate as the member that the alternate replaces. The term of each member and each alternate shall be for a period of 4 years; provided that of the members and alternates first appointed, one member and (two) alternates shall be appointed for a period of 4 years, one member and (two) alternates shall be appointed for a period of 3 years and one member and (two) alternates shall be appointed for a period of 2

years. The members of the board, its alternates and its employees shall receive necessary expenses.

1st sentence,

Sec. 24. 26 MRSA §968, sub-§2, as last repealed and replaced by PL 1971, c. 609, §9, is amended to read:

An Executive Director of the Public-Employees Maine Labor Relations Board shall be appointed by the board to serve at their will and pleasure.

Sec. 25. 26 MRSA §968, sub-§3, 1st sentence, as last repealed and replaced by PL 1971, c. 609, §9, is repealed and the following enacted in place thereof:

The board may, after a public hearing, from time to time, adopt such rules of procedure as it deems necessary for the orderly conduct of its business and for carrying out the purposes of this chapter.

Sec. 26. 26 MRSA §968, sub-§4, 1st 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 Maine Labor Relations Board.

Sec. 27. 26 MRSA §968, sub-§5, ¶B, 2nd sentence, as last amended by PL 1973, c. 788, §120-A, is further amended to read:

~~Upon receipt of such complaint, the executive director shall cause~~
~~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. 28. 26 MRSA §968, sub-§5, ¶D, 1st sentence, as last
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. 29. 26 MRSA §968, sub-§5, ¶F, 1st sentence, as last
repealed and replaced by PL 1973, c. 533, §2, is amended to read:

Either party may seek a review by the Superior Court of Kennebec County of a decision of the Public-Employees Maine Labor Relations Board by filing a complaint in accordance with the Rules of Civil Procedure, Rule 80B, provided the complaint shall be filed within 15 days of the effective date of the decision.

Sec. 30. 26 MRSA §973 is enacted to read:

§973. Separability

If any clause, sentence, paragraph or part of this chapter 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.

Sec. 31. 26 MRSA §979-A, sub-§2, as enacted by PL 1973,
c. 744, is amended to read:

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

Sec. 32. 26 MRSA §979-A, sub-§4, as enacted by PL 1973, c. 774, is amended to read:

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

Sec. 33. 26 MRSA §979-D, sub-§2, ¶¶ A, B and C, as enacted by PL 1973, c. 774, are amended to read:

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 and other disputes subject to settlement 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~~ Maine 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~~ Maine 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.

Sec. 34. 26 MRSA §979-D, sub-§3, ¶A, as enacted by PL 1973, c. 774, is amended to read:

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~~ Maine Labor Relations Board for fact-finding services with recommendations or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations.

1st sentence,
Sec. 35. 26 MRSA §979-D, sub-§3, ¶B, as enacted by PL 1973,
c. 774, is amended to read:

If the parties do not jointly agree to call upon the Maine Labor Relations
~~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.

Sec. 36. 26 MRSA §979-G, sub-§2, 1st sentence, as enacted
by PL 1973, c. 774, is amended to read:

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~~ Maine Labor Relations Board.

Sec. 37. 26 MRSA §979-H, sub-§7, first sentence, as enacted
by PL 1973, c. 774, is amended to read:

Either party may seek a review by the Superior Court in Kennebec
County of a decision or order of the ~~Public-Employees~~ Maine 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.

Sec. 38. 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~~ Department of Manpower
Affairs and authorization for expenditures shall be the respon-
sibility of the chairman or executive director.

Sec. 39. 26 MRSA §979-O is enacted to read:

§979-O. Name

The name of the Public Employees Labor Relations Board is changed to the Maine Labor Relations Board. Whenever the name Public Employees Labor Relations Board appears in law, it shall be construed to mean Maine Labor Relations Board.

Sec. 40. Effective Date. Sections 38 and 39/shall take effect 92 days after adjournment of the Regular Session of the 107th Maine Legislature.' of this Act

Statement of Fact

The purpose of this amendment is to strengthen public facilities for dispute resolution. The amendment includes provisions to:

1. Broaden the coverage of the Panel of Mediators to more explicitly authorize its use if requested in both private and public sector labor-management disputes and to authorize its use in disputes not involving labor-management relations where the parties request labor mediators and the Labor Relations Board finds it in the public interest to mediate.
2. Change the method of choosing the Panel of Mediators.
3. Change the name of the Public Employees Labor Relations Board to the Maine Labor Relations Board (MLRB) and to place the Panel of Mediators and the State Board of Arbitration and Conciliation under the administrative and budgetary supervision of the MLRB, which is in turn under the administrative and budgetary supervision of the Department of Manpower Affairs.
4. Change the size, composition and method of selection of the Maine Labor Relations Board to better reflect its concern

with the public interest and the public and private sectors and to assure equal representation of these interests and to accomodate the increase in the board's workload.

Reported by the Majority of the Committee on Labor.

Reproduced and distributed under the direction of the Clerk of the House.
6/10/75

(Filing No. H-700)