

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1780

H. P. 1371

House of Representatives, April 4, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Kelleher of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Define the Responsibilities of the Bureau of Labor and the
Public Employees Labor Relations Board.

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

Sec. 1. 26 MRSA §§ 891-896 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 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. 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 of said panel which shall be included in the budget of the Bureau of Labor. Authorization for services rendered and expenditures incurred by members of the panel shall be the responsibility of the Director of the Bureau of Labor.

§ 893. Notification

The employer, union or employees shall notify the director, in writing, whenever contracts are to be negotiated between the employer and the em-

ployees or whenever a dispute arises between the parties threatening interruption of work or under both conditions.

§ 894. Mediation procedures; duties

The director, upon request of one or both of the parties to a dispute between an employer and his employees, shall, or upon his own motion may, proffer the services of one or more members of the panel to be selected by him, to serve as a mediator or mediators in such a dispute. The member or members so selected shall exert every reasonable effort to encourage the parties to the dispute to settle their differences by conference or other peaceful means. If the mediator or mediators are unable to accomplish this objective and to obtain an amicable settlement of the dispute between the parties, it shall then be the duty of the mediator or mediators to advise the parties of the services available to assist them in settlement of their dispute. At this time, the mediator or mediators shall submit a written report to the director stating the action or actions that have been taken and the results of their endeavors.

§ 895. Services not available if covered by agreement

The services of the panel as mediators shall not be invoked in any dispute between the parties to an agreement between an employer and his employees if such agreement contains provisions for a method of settlement of such dispute.

§ 896. Information privileged

Any information disclosed by either party to a dispute to the panel or any of its members in carrying out this subchapter shall be privileged.

Sec. 2. 26 MRSA § 911, as last amended by PL 1971, c. 620, § 13, is repealed and the following enacted in place thereof:

§ 911. Appointment and qualification; salaries and expenses

The State Board of Arbitration and Conciliation shall consist of 9 members appointed by the Governor, with the advice and consent of the Council, from time to time upon the expiration of the terms of 3 years. Three shall be employers of labor or selected from some association representing employers of labor and 3 shall be employees selected from some bona fide trade or labor union. The 3 remaining members shall represent the public interests of the State. Vacancies occurring during a term shall be filled for the unexpired term. Members of the board shall each receive \$75 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. The appropriation for the board shall be included in the budget of the Bureau of Labor and authorization for expenditures shall be the responsibility of the director.

Sec. 3. 26 MRSA § 915, first ¶ is repealed and the following enacted in place thereof:

Whenever it appears to the employer or employees concerned in a dispute that a strike is threatened, or actually occurs, he or they may petition the

director for the services of the board and notification may be given by the mayor of a city or the selectmen of a town or any citizen of the State directly involved. Following such petition or notification, the director shall assign one employer member, one employee member and one member to represent the public interests of the State, the latter to act as chairman.

Sec. 4. 26 MRSA § 915, 5th ¶ is repealed as follows:

~~When for any reason a member of the board does not serve in any particular case, the alternate member having the same qualifications shall act as a member of the board in such case~~

Sec. 5. 26 MRSA §§ 917 and 918 are repealed and the following enacted in place thereof:

§ 917. Application for inquiry; notice of hearing

In cases of controversy, where conciliation, mediation or arbitration is refused by one of the parties, either party may petition the director for the services of the board to make inquiry. The application for such inquiry may be signed by the employer or by a majority of the employees in the department of the business in which the controversy exists or by their agent or by both parties, and, if signed by an agent claiming to represent a majority of the employees, the director shall satisfy himself that he is duly authorized to do so.

Upon receipt of the application for such inquiry, the director shall assign one employer member, one employee member and one member to represent the public interests of the State, the latter to act as chairman, and shall give notice of time and place of hearing, and may, at his discretion, give public notice by publishing in at least one newspaper the time and place of the hearing.

The director shall, upon request of the Governor or the mayor of a city or the selectmen of a town, assign 3 members in like manner to investigate and report upon any controversy if, in their opinion, it threatens to affect the public welfare.

The assigned board, after such inquiry, may make and publish a report of its findings.

§ 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 director. Each party shall, within 5 days, select one arbitrator from the board in the appropriate category and shall immediately notify each other in writing of the name and address of the person so selected. The 2 arbitrators so selected shall, within 10 days, agree upon and select a 3rd person from those board members representing the public interests of the State, who shall act as chairman.

The chairman of the selected board shall give prompt notice of the time and place of hearing to both parties.

Sec. 6. 26 MRSA § 965, sub-§ 2, as last repealed and replaced by PL 1973, c. 617, § 2, is repealed and the following enacted in place thereof:

2. Mediation. Mediation procedures shall be followed whenever either party to a controversy requests such services prior to arbitration or at any time on motion of the Director of the Bureau of Labor in accordance with sections 891 to 896.

Sec. 7. 26 MRSA § 965, sub-§ 3, as last amended by PL 1973 c. 458, § 5, is further amended to read:

3. Fact-finding. 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.

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~~ director for making such appointment. The fact-finding panel shall be appointed from a list maintained by the ~~board~~ director 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. The members of the fact-finding panel shall submit their findings and recommendations only to the parties and to the ~~Executive Director of the Public Employees Labor Relations Board~~ Director of the Bureau of Labor.

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 Public Employees Labor Relations Board~~ Director of the Bureau of Labor may, but not until the end of said period unless the parties otherwise jointly agree, make the fact-finding and recommendations public.

Sec. 8. 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 Labor Relations Board at the offices of its executive director~~ Bureau of Labor 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 Labor Relations Board~~ **Director of the Bureau of Labor** not more than 5 days after the arbitration proceeding has terminated.

Sec. 9. 26 MRSA § 968, sub-§ 1, last sentence, as last repealed and replaced by PL 1973, c. 788, § 120, is repealed and the following enacted in place thereof:

The members of the board and the alternate shall receive necessary expenses.

Sec. 10. 26 MRSA § 968, sub-§ 7, first ¶, as last amended by PL 1971, c. 620, § 13, is further amended to read:

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.

Sec. 11. 26 MRSA § 979-D, sub-§ 2, ¶¶ B and C, as enacted by PL 1973, c. 774, are amended to read:

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~~ **Director of the Bureau of Labor**.

C. The employer, union or employees involved in collective bargaining shall notify the ~~Executive Director of the Public Employees Labor Relations Board~~ **Director of the Bureau of Labor**, 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. 12. 26 MRSA § 979-D, sub-§ 3, ¶ B, as enacted by PL 1973, c. 774, is amended to read:

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

Sec. 13. 26 MRSA § 979-D, sub-§ 4, ¶ B, as enacted by PL 1973, c. 774, is amended to read:

B. If the parties have not resolved their controversy by the end of said 45-day period, either party may petition the ~~board~~ **Director of the Bureau of Labor** to initiate compulsory final and binding arbitration of the negotiations impasse. On receipt of the petition, the ~~executive director of the Board~~ **Director of the Bureau of Labor** 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~~ **director** 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~~ **director** 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~~ **director** as arbitrator.

Sec. 14. 26 MRSA § 979-D, sub-§ 4, ¶ E, as enacted by PL 1973, c. 774, is amended to read:

E. 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~~ **Director of the Bureau of Labor**, unless the aforesaid time limitation shall be extended by the ~~executive director~~ **director**.

Sec. 15. 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~~

STATEMENT OF FACT

This bill would sever the connection between the Public Employees Labor Relations Board and the Bureau of Labor, giving the board responsibility for its own budget, accounting and reporting. The board would be responsible for determination of bargaining units and bargaining agents, including conduct of elections, and prevention of prohibited acts under the laws. In all but 2 cases, Maine and Hawaii, all Public Employee Labor Relations Boards are independent agencies.

The machinery for impasse solution would be under the Bureau of Labor, including fact-finding, mediation, arbitration and conciliation. In other jurisdictions, these activities are located either in the state departments of labor or are independent, with the vast majority being within the departments.