

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2148

H. P. 1961

House of Representatives, January 30, 1976

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

EDWIN H. PERT, Clerk

Presented by Mr. Garsoe of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Amend the Procedures of the Maine Labor Relations Board.

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

Sec. 1. 1 MRSA § 402, as last repealed and replaced by PL 1975 c. 243 and as amended by PL 1975, c. 483, § 2, is repealed and the following enacted in place thereof:

§ 402. Public proceedings defined

The term "public proceedings" as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the State by any administrative or legislative body of the State, or of any of its counties or municipalities, or of any other political or administrative subdivision of the State or of the Board of Trustees of the University of Maine or of the Board of Trustees of The Maine Maritime Academy, with which function it is charged under any statute or under any rule or regulation of such administrative or legislative body, including the Legislature of Maine and its committee or subcommittees, or agency.

The term "public proceeding" shall not include collective bargaining negotiations between the representatives of a public employer and public employees and such negotiations shall not be open to the public.

Sec. 2. 1 MRSA § 402-A, sub-§ 4 is enacted to read:

4. Material prepared for collective bargaining purposes. Records, working papers, interoffice and intraoffice memoranda prepared or maintained for the purpose of carrying out the responsibilities of a public employer in collective bargaining with its employees and their designated representatives.

Sec. 3. 26 MRSA § 966, sub-§ 1, as last repealed and replaced by PL 1975, c. 564, § 20, is amended by inserting after the first sentence the following new sentence:

The executive director or his designee conducting unit determination proceedings 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.

Sec. 4. 26 MRSA § 966, sub-§ 3 is enacted to read:

3. Unit clarification. Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

Sec. 5. 26 MRSA § 968, sub-§ 4, first sentence, as last amended by PL 1975, c. 564, § 25, is further 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, except that in the instance of objections to the conduct of an election or challenged ballots the time period shall be 5 working days, to the Maine Labor Relations Board.

Sec. 6. 26 MRSA § 968, sub-§ 5, ¶ B, as last amended by PL 1975, c. 564, § 26, is repealed and the following enacted in place thereof:

B. Any public employer, any public employee, any public employee organization or any bargaining agent which believes that any person, any public employer, any public employee, any public 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. No such complaint shall be filed with the executive director until the complaining party shall have served a copy thereof upon the party complained of. Upon receipt of such complaint, the executive director or his designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board, that notice to designate the time and place of hearing for the prehearing conference or the hearing, as appropriate, 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 the proceeding and to present testimony. Nothing in this paragraph shall restrict the right of the board to require the executive director or his designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as he may deem appropriate, subject to review by the board.

Sec. 7. 26 MRSA § 968, sub-§ 5, ¶ D, 2nd sentence, as enacted by PL 1973, c. 533, § 1, is amended to read:

Upon application of any party ~~of~~ in interest or the board, 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 shall not be stayed except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury shall be sustained or that there is a substantial risk of danger to the public health or safety.

Sec. 8. 26 MRSA § 968, sub-§ 5, ¶ F, 3rd sentence, as repealed and replaced by PL 1973, c. 533, § 2, is amended to read:

Pending review and upon application of any party ~~of~~ in 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 shall not be stayed except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury shall be sustained or that there is a substantial risk of danger to the public health or safety.

Sec. 9. 26 MRSA § 968, sub-§ 7, first sentence, as amended by PL 1971, c. 620, § 13, is 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.~~

Sec. 10. 26 MRSA § 979-E, sub-§ 1, as last amended by PL 1975, c. 612, § 1, is further amended by inserting after the first sentence the following new sentence:

The executive director or his designee conducting unit determination proceedings 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.

Sec. 11. 26 MRSA § 979-E, sub-§ 3 is enacted to read:

3. Unit clarification. Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a peti-

tion for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

Sec. 12. 26 MRSA § 979-G, sub-§ 2, first sentence, as amended by PL 1975, c. 564, § 35, is further 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, except that in the instance of objections to the conduct of an election or challenged ballots the time period shall be 5 working days, to the Maine Labor Relations Board.

Sec. 13. 26 MRSA § 979-H, sub-§ 2, as enacted by PL 1973, c. 774, is amended to read:

2. The public employer, any state employee, any 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.~~ No such complaint shall be filed with the executive director until the complaining party shall have served a copy thereof upon the party complained of. ~~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.~~ Upon receipt of such complaint, the executive director or his designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board, that notice to designate the time and place of hearing for the prehearing conference or the hearing, as appropriate, 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 that proceeding and to present testimony. Nothing in this subsection shall restrict the right of the board to require the executive director or his designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as he may deem appropriate, subject to review by the board.

Sec. 14. 26 MRSA § 979-H, sub-§ 7, 3rd sentence, as enacted by PL 1973, c. 774, is amended to read:

Pending review and upon application of any party ~~of~~ in 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.

Sec. 15. 26 MRSA § 1024, sub-§ 3, as enacted by PL 1975, c. 603, § 1, is amended by adding at the end the following new sentence:

The executive director or his designee conducting unit determination proceedings 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.

Sec. 16. 26 MRSA § 1024, sub-§ 4, is enacted to read:

4. Unit clarification. Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

Sec. 17. 26 MRSA § 1028, sub-§ 2, first sentence, as last amended by PL 1975, c. 564, § 38, is further amended to read:

Any person aggrieved by any ruling or determination of the executive director under sections 1024 and 1025 may appeal, within 15 days of the announcement of the ruling or determination, ~~except that in the instance of objections to the conduct of an election or challenged ballots the time period shall be 5 working days, to the Maine Labor Relations Board.~~

Sec. 18. 26 MRSA § 1029, sub-§ 2, as enacted by PL 1975, c. 603, § 1, is amended to read:

2. **Complaints.** The university, any university employee, any university employee organization or any bargaining agent which believes that any person, the university, any university employee, any university 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. No such complaint shall be filed with the executive director until the complaining party shall have served a copy thereof upon the party complained of. 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. Upon receipt of such complaint, the executive director or his designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing for the prehearing conference or the hearing, as appropriate, 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 that proceeding and to present testimony. Nothing in this subsection shall restrict the right of the board to require the executive director or his designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as he may deem appropriate, subject to review by the board.

Sec. 19. 26 MRSA § 1029, sub-§ 7, 3rd sentence, as enacted by PL 1975; c. 603, § 1, is amended to read:

Pending review and upon application of any part ~~of~~ in 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.

STATEMENT OF FACT

The purpose of this bill is to remove any ambiguities or inconsistencies which exist concerning the procedures set forth in the Municipal Public Employees Labor Relations Act, the State Employee Labor Relations Act and the University of Maine Labor Relations Act. This bill authorizes a unit clarification procedure and extends the right of subpoena to hearings concerning the appropriateness of a bargaining unit.

Passage of this bill may produce cost savings resulting from administrative review and recommendation of dismissal for unfounded and unsubstantiated unfair labor practice charges which would otherwise be set for hearings before the Maine Labor Relations Board.

This bill also provides for an accelerated appeals period for questions involving union elections or challenged ballots, thus allowing the parties to ascertain their status and to proceed according to the statutory requirements of the labor relations laws in a more expeditious manner.