

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

**Legislative Document**

**No. 122**

H. P. 102

House of Representatives, January 18, 1979

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

EDWIN H. PERT, Clerk

Presented by Mrs. Beaulieu of Portland.

Cosponsors: Mr. Masterman of Milo and Mr. Sprowl of Hope.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT Permitting Binding Arbitration for Public Employees in Critical Public Services.**

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

Sec. 1. 26 MRSA § 962, sub-§ 2-B, is enacted to read:

2-B. **Critical public services.** "Critical public services" shall mean:

- A. **Municipal fire departments;**
- B. **Municipal police departments;**
- C. **Municipal ambulance and rescue services; and**
- D. **Direct care services in municipal hospitals.**

Sec. 2. 26 MRSA § 965-A is enacted to read:

**§ 965-A. Binding arbitration for critical public services**

1. **Statement of policy.** It is the policy of this State that in critical public services, where the right of employees to strike is by law prohibited, it is requisite to the high morale of the employees and the efficient provision of these services to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this section providing for binding arbitration, shall be liberally construed.

2. **Impasse.** In addition to the 30-day period referred to in section 965, subsection 3, the parties shall have 15 more days, making a total period of 45 days from the submission of findings and recommendations in which to make a good-faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of the 45-day period, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. If they do not jointly agree to such an arbitration procedure within 10 days after the end of the 45-day period, then either party may, by written notice to the other, request that their differences be submitted to a board of 3 arbitrators.

3. **Arbitrators.** The bargaining agent and the public employer shall, within 5 days of the request, each select and name one arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The 2 arbitrators so selected and named shall, within 10 days from the request, agree upon and select and name a neutral arbitrator. If either party shall not select its arbitrator or if the 2 arbitrators shall fail to agree upon, select and name a neutral arbitrator within the 10 days, either party may request the American Arbitration Association to utilize its procedures for the selection of a neutral arbitrator. As soon as possible after receipt of the request, the neutral arbitrator shall be selected in accordance with rules and procedures prescribed by the American Arbitration Association for making the selection. The neutral arbitrator so selected shall not, without the consent of both parties, be the same person who was selected as mediator pursuant to section 965, subsection 2, nor any member of the fact-finding board selected pursuant to section 965, subsection 3.

4. **Impasse items.** Each party shall submit to the Executive Director of the Maine Labor Relations Board, within 5 days of the request for arbitration, a final offer on the impasse items with proof of service of a copy thereof upon the opposing party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached. The impasse items submitted to the arbitrators shall be limited to those issues that have been considered by the fact-finder pursuant to section 965, subsection 3, and upon which the parties have not reached agreement.

5. **Procedure.** The arbitrators, acting through the neutral arbitrator who shall serve as chairman, shall hold a hearing within 15 days after the date of appointment of the neutral arbitrator. The hearing shall be conducted at a place within the locality of the municipality involved, where feasible. The chairman shall give at least 7 days' notice, in writing, of the time and place of the hearing to each of the other arbitrators, to the municipal employer and to the bargaining agent. The chairman shall preside over the hearing. The 3 arbitrators, or if either shall not have selected its arbitrator, the 2 arbitrators, as the case may be, shall meet with the parties or their representatives, or both, make inquiries and investigations, hold hearings, or take such other steps as they deem appropriate. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The

arbitrators 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 presented to them for determination. If any person refuses to obey a subpoena or refuses to be sworn or to testify, the arbitrators may invoke the aid of the Superior Court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. A record of the proceedings may be kept upon request of a party. The cost of the record and transcript, if any, shall be borne by the party requesting them. A transcript of the hearing shall not be necessary for an award by the arbitrators. Unless jointly requested by both parties, the arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

6. Arbitrators' award. Within 15 days after the close of a hearing, a majority of the arbitrators shall select, for each impasse item, either the most reasonable of the final offers on each impasse item submitted by the parties or the recommendations of the fact-finder. The award by the arbitrators and the items agreed upon by the public employer and the employee organization shall together constitute the arbitrators' award and shall be deemed to be the collective bargaining agreement between the parties. The award shall be effective as of the date of the award, unless a majority of the arbitrators shall determine an earlier effective date subject to the limitations set forth in subsection 9.

7. Basis for award. The factors, among others, to be given weight by the arbitrators in arriving at their selections shall include:

- A. Stipulations of the parties;
- B. The lawful authority of the employer;
- C. The financial ability of the employer to meet costs;
- D. The interest and welfare of the public;
- E. The hazards of employment;
- F. The physical, education, and mental qualifications, job training and skills involved in the employment;
- G. The comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities;
- H. The average consumer prices for goods and services, commonly known as the cost of living;
- I. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

**J. Any changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;**

**K. Any other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment; and**

**L. Past collective bargaining contracts between the parties, including the bargaining that led up to those contracts.**

**8. Negotiations.** The parties may continue to negotiate all offers until an agreement is reached or until an award is made by the arbitrators. In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree to be bound accordingly, the representatives may, at any time prior to the final decision by the arbitrators, jointly request that the arbitration proceedings be terminated, and the arbitrators, acting through the chairman, shall terminate the proceedings.

**9. Retroactivity.** The commencement of a new fiscal year for the employer prior to the final award by the arbitrators, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitrators or of their award. Any award of the arbitrators may be retroactive to the expiration date of the last contract between the parties.

**10. Arbitrators' report.** The panel of arbitrators shall give written explanation for its selections as part of its award. The results of all arbitration proceedings shall be filed with the Maine Labor Relations Board at the offices of its Executive Director simultaneously with the submission of the award to the parties. In the event the parties settle their dispute prior to an award, the chairman shall submit a report of the activities of the arbitrators to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

**11. Appeal.** The award of the arbitrators shall be final and binding, subject to section 972.

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

**3-A. Critical public services.** "Critical public services" shall mean:

- A. Direct care services in state correctional institutions;**
- B. Direct care services in state mental institution; and**
- C. The Maine State Police.**

Sec. 4. 26 MRSA § 979-P is enacted to read:

**§ 979-P. Binding arbitration for critical public services**

1. **Statement of policy.** It is the policy of this State that in critical public services, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient provision of those services to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this section providing for binding arbitration, shall be liberally construed.

2. **Impasse.** In addition to the 30-day period referred to in section 965, subsection 3, the parties shall have 15 more days, making a total period of 45 days from the submission of findings and recommendations in which to make a good-faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of the 45-day period, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. If they do not jointly agree to such an arbitration procedure within 10 days after the end of the 45-day period, then either party may, by written notice to the other, request that their differences be submitted to a board of 3 arbitrators.

3. **Arbitrators.** The bargaining agent and the public employer shall, within 5 days of the request, each select and name one arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The 2 arbitrators so selected and named shall, within 10 days from the request, agree upon and select and name a neutral arbitrator. If either party shall not select its arbitrator or if the 2 arbitrators shall fail to agree upon, select and name a neutral arbitrator within the 10 days, either party may request the American Arbitration Association to utilize its procedures for the selection of a neutral arbitrator. As soon as possible after receipt of the request, the neutral arbitrator shall be selected in accordance with rules and procedures prescribed by the American Arbitration Association for making the selection. The neutral arbitrator so selected shall not, without the consent of both parties, be the same person who was selected as mediator pursuant to section 965, subsection 2, nor any member of the fact-finding board selected pursuant to section 965, subsection 3.

4. **Impasse items.** Each party shall submit to the Executive Director of the Maine Labor Relations Board, within 5 days of the request for arbitration, a final offer on the impasse items with proof of service of a copy thereof upon the opposing party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached. The impasse items submitted to the arbitrators shall be limited to those issues that have been considered by the fact-finder pursuant to section 965, subsection 3 and upon which the parties have not reached agreement.

5. **Procedure.** The arbitrators, acting through the neutral arbitrator who shall serve as chairman, shall hold a hearing within 15 days after the date of appointment of the neutral arbitrator. The chairman shall give at least 7 days' notice, in writing, of the time and place of the hearing to each of the other

arbitrators, to the municipal employer and to the bargaining agent. The chairman shall preside over the hearing. The 3 arbitrators, or if either shall not have selected its arbitrator, the 2 arbitrators, as the case may be, shall meet with the parties or their representatives, or both, make inquiries and investigations, hold hearings, or take any other steps they deem appropriate. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators 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 presented to them for determination. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, the arbitrators may invoke the aid of the Superior Court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. A record of the proceedings may be kept upon request of a party. The cost of the record and transcript, if any, shall be borne by the party requesting them. A transcript of the hearing shall not be necessary for an award by the arbitrators. Unless jointly requested by both parties, the arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than prescribed in this section.

6. Arbitrators' award. Within 15 days after the close of a hearing, a majority of the arbitrators shall select for each impasse item either the most reasonable of the final offers on each impasse item submitted by the parties or the recommendations of the fact-finder. The awards by the arbitrators and the items agreed upon by the public employer and the employee organization shall together constitute the arbitrators' award and shall be deemed to be the collective bargaining agreement between the parties. The award shall be effective as of the date of the award, unless a majority of the arbitrators shall determine an earlier effective date subject to the limitations set forth in subsection 9.

7. Basis for award. The factors, among others, to be given weight by the arbitrators in arriving at their selection shall include:

- A. Stipulation of the parties;
- B. The lawful authority of the employer;
- C. The financial ability of the employer to meet costs;
- D. The interests and welfare of the public;
- E. The hazard of employment;
- F. The physical, education, and mental qualifications, job training and skills involved in the employment;
- G. The comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment;

**H. The average consumer prices for goods and services commonly known as the cost of living;**

**I. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;**

**J. Any changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;**

**K. Any other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment; and**

**L. Past collective bargaining contracts between the parties, including the bargaining that led up to the contracts.**

**8. Negotiations.** The parties may continue to negotiate all offers until an agreement is reached or until an award is made by the arbitrators. In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree to be bound accordingly, the representatives may, at any time prior to the final decision by the arbitrators, jointly request that the arbitration proceedings be terminated, and the arbitrators, acting through the chairman, shall terminate the proceedings.

**9. Retroactivity.** The commencement of a new fiscal year for the employer prior to the final award by the arbitrators, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitrators or of their award. Any award of the arbitrators may be retroactive to the expiration date of the last contract between the parties.

**10. Arbitrators' report.** The panel of arbitrators shall give written explanation for its selections as part of its award. The results of all arbitration proceedings shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the award to the parties. In the event the parties settle their dispute prior to an award, the chairman shall submit a report of the activities of the arbitrators to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

**11. Appeal.** The award of the arbitrators shall be final and binding, subject to section 979-M.



## STATEMENT OF FACT

The purpose of this bill is to permit binding arbitration for public employees in the “critical public services,” which are defined to include those state and municipal employees who are eligible to bargain collectively and whose professions are most closely associated with the loss of life and loss of property. These include:

1. Municipal fire departments;
2. Municipal police departments;
3. Municipal ambulance and rescue services;
4. Direct care services in municipal hospitals;
5. Direct care services in state correctional institutions;
6. Direct care services in state mental institutions; and
7. The Maine State Police.

A key feature of the bill is the provision which permits a majority of the arbitrators to select the best offer of the parties or the recommendation of the fact-finder on **each** impasse item. This is in contrast to the provisions of some arbitration laws, which require the arbitrators to select the last best offer of one of the parties on **all** of the impasse items.