

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 713

S. P. 249

In Senate, February 22, 1979

Referred to the Committee on Labor. Sent down for concurrence and 2,500 ordered printed.

Presented by Senator Trotzky of Penobscot.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Concerning Strikes or Work Stoppages by Public Employees.

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

26 MRSA c. 23 is enacted to read:

CHAPTER 23

PENALTIES FOR ILLEGAL STRIKES

§ 1651. Strike prohibition

No public employee or public employee organization covered under chapters 9A, 9B and 12 shall engage in a strike nor cause, instigate, encourage or condone a work stoppage, slowdown or strike or the blacklisting of a public employer for the purpose of preventing them filling employee vacancies.

§ 1652. Employee organization violation and penalties

1. Penalties. An employee organization which is determined by the Maine Labor Relations Board to have violated the provisions of section 1651 shall lose the following:

A. The right to represent the employees in negotiations and in the settlement of grievances;

B. The right to contract to deduct membership dues from employee paychecks;

C. Under chapter 12, the right to contract to collect an agency fee from employees not a member of the organization; and

D. Under chapter 12, the right to require employees to join an employee organization upon being hired.

The penalties described in this section are not meant to be the exclusive penalties for violation of section 1651.

2. Institute proceedings. In the event that it appears that a violation of section 1651 may have occurred, proceedings before the Maine Labor Relations Board may be instituted in the manner prescribed in sections 968, 979-H and 1029.

3. Determination. In determining whether an employee organization has violated section 1651, the board shall consider:

A. Whether the employee organization called the strike or tried to prevent it; and

B. Whether the employee organization made or was making good faith efforts to terminate the strike.

4. Penalties. If the board determines that an employee organization has violated the provisions of section 1651, the board may order forfeiture of the rights described in subsection 1 for the specified period of time as the board shall determine. In the discretion of the board these rights may be forfeited for an indefinite period of time. They may be restored upon application, with notice to all interested parties, if there is evidence of good faith compliance with the requirements of section 1651 since the date of the violation. This evidence of good faith may include, for example, the successful negotiation, without a violation of section 1651, of a contract covering the employees in the unit affected by the violation. Where a fine imposed on an employee organization pursuant to an injunction remains unpaid, after the exhaustion of the cash and securities of the employee organization, the board shall direct that membership dues deduction shall be continued to the extent necessary to pay the fine and that the public employer shall transmit the money to the court. In fixing the duration of the forfeiture, the board shall consider all the relevant facts and circumstances, including, but not limited to:

A. The extent of any willful defiance of section 1651;

B. The impact of the strike on the public health, safety and welfare of the community; and

C. The financial resources of the employee organization.

The board may consider:

- (1) The refusal of the employee organization or the appropriate public employer or the representative thereof, to participate in good faith in the mediation and fact-finding procedures; and
- (2) Whether, if so alleged by the employee organization, the appropriate public employer or his representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike.

In determining the financial resources of the employee organization, the board shall consider both the income and the assets of the employee organization. In the event membership dues are collected by the public employer the books and records of the public employer shall be prima facie evidence of the amount so collected.

§ 1653. Employee violations and penalties

1. **Presumption.** For purposes of this chapter an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date when a work stoppage, slowdown or strike occurs, shall be presumed to have violated section 1651.

2. **Prohibition against consent to strike.** No person exercising on behalf of any public employer any authority over a public employee shall have the power to authorize or condone a work stoppage, slowdown or strike.

3. **Determination.** In the event that it appears that a violation of section 1651 or subsection 2 many have occurred, the chief executive of the government body or subdivision involved may, on the basis of such investigation and affidavits as he may deem appropriate, determine whether or not a violation has occurred. If the chief executive officer determines that a violation has occurred, he may then determine the names of employees who committed the violation. That determination shall not be deemed to be final until the completion of the procedures provided for in this section. For the purposes of this chapter, the chief executive officer shall include:

- A. For State Government, the governor;
- B. For municipalities, the mayor or first selectman;
- C. For school administrative units, the chairman of the school board; and
- D. For the University of Maine, the chancellor, for the Maine Maritime Academy, the superintendent, for a vocational technical institute or school of practical nursing, the director.

4. **Notice.** The chief executive officer shall notify each employee that he has been found to have committed a violation, the date of the violation and of his right

to object to this determination. He shall also notify the chief fiscal official of the names of all the employees and of the total number of days, or part thereof, on which it has been determined that the violation occurred. Notice to each employee shall be by personal service or by certified mail to his last address filed by him with his employer.

5. Payroll deductions. Not earlier than 30 nor later than 90 days following the date of the determination, the chief fiscal official of the government involved shall deduct from the compensation of each public employee an amount equal to twice his daily rate of pay for each day or part thereof that it was determined that he had violated section 1651; this rate of pay shall be computed as of the time of the violation. In computing this deduction, credit shall be allowed for amounts already withheld from the employee's compensation on account of his absence from work or other withholding of services on that day or days. In computing the 30 to 90-day period of time following the determination of a violation and where the employee's annual compensation is paid over a period of time which is less than 52 weeks, that period of time between the last day of the last payroll period of the employment term in which the violation occurred and the first day of the first payroll period of the next succeeding employment term shall not be counted.

6. Objections and restoration. Any employee determined to have violated this chapter may object by filing with the chief executive officer, within 20 days of the date on which notice was served or mailed to him, his sworn affidavit, supported by available documentary proof, containing a short and plain statement of the facts upon which he relies to show that the determination was incorrect. The affidavit shall be subject to the penalties of perjury. If the chief executive officer shall determine that the affidavit and supporting proof establishes that the employee did not violate this chapter he shall sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to establish that the employee did not violate this chapter, he shall dismiss the objection and so notify the employee. If the chief executive officer shall determine that the affidavit and supporting proof raises a question of fact which, if resolved in favor of the employee, would establish that the employee did not violate this chapter he shall appoint an impartial hearing officer to determine whether in fact the employee did violate this section. At the hearing the employee may call witnesses, be represented by counsel and shall bear the burden of proof. A record shall be kept of the proceedings. If the hearing officer shall determine that the employee failed to establish that he did not violate this section, the chief executive officer shall so notify the employee. If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that the employee did not violate this chapter, the chief executive officer shall forthwith notify the chief fiscal official who shall cease all further deductions and refund, with interest, any deductions previously made pursuant to this section.

7. Additional penalties. The chief executive officer upon the final determination that an employee violated this chapter may discharge him. If the

employee is hired again he must earn again any seniority or pension benefits and rights. The penalties described in this section are not the exclusive penalties for violations of this chapter.

§ 1654. Application for injunctive relief

Where it appears that public employees or an employee organization threaten or are about to do or are doing an act in violation of section 1651, chief executive officer of the government involved may apply to the Superior Court for an injunction against the violation.

STATEMENT OF FACT

The purpose of this bill is to prevent an illegal work stoppage, slowdown or strike by public employees or their unions and to describe some penalties for the offenses. Specifically,

- Sec. 1651: Prohibits work stoppages, slowdowns or strikes by public employees or public employee organizations covered under our 3 collective bargaining acts.
- Sec. 1652: Prescribes specific penalties for a public employee organization found to have participated in a violation of section 1651. The Maine Labor Relations Board decides whether or not the union's actions violated this section. A union could lose the right to represent employees, or to bargain for the right to deduct membership dues, or to collect an agency fee from nonunion employees or to have a "union shop".
- Sec. 1653: Requires the chief executive of the government body (state, local, school unit, University of Maine, etc.) to make the initial decision as to whether an employee has participated in an illegal strike. An employee could be penalized 2 days of pay for each day on strike. He could also be discharged and if rehired required to reearn any seniority or pension benefits and rights.
- Sec. 1654: Describes when the government or school unit might seek an injunction against an illegal strike.