

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 957

H. P. 748

House of Representatives, March 2, 1979

On Motion of Mr. Wyman of Pittsfield, referred to the Committee on Labor.
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Gray of Rockland.

Cosponsors: Mr. Marshall of Millinocket, Mrs. Martin of Brunswick and Mr. Baker of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT to Protect Management Personnel Where Unjustly Discharged or
Involuntarily Retired.**

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

26 MRSA C. 23 is enacted to read:

CHAPTER 23

SUPERVISORY AND SALARIED EMPLOYEES

§ 1701. Definitions

As used in this chapter unless the context otherwise indicates, the following terms shall have the following meanings.

1. Normal retirement age. "Normal retirement age" means the specified age, the years of service requirement or any age and years of service combination at which a member is eligible for full retirement benefits.

2. Salaried employee. "Salaried employee" means an employee whose wages are not computed on an hourly basis but who receives a set wage for each week, month, year or other period of time during which he is employed regardless of the number of hours of work included in that time period.

3. **Supervisory employee.** "Supervisory employee" means any employee whose principal work tasks 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, in 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.

§ 1702. Discharge without just cause

1. **Representation by arbitrator.** No employer shall discharge any supervisory employee or salaried employee who is not a member of a labor organization which represents that employee in collective bargaining unless that discharge is for just cause. Any such supervisory employee or salaried employee who is discharged shall have the right to request a review of that discharge before an impartial arbitrator, to be agreed upon by both the employer and the employee. If the employer and employee fail to agree on an impartial arbitrator, the arbitrator shall be selected according to the rules and procedures of the American Arbitration Association. The impartial arbitrator shall hold a hearing to determine if the discharge is for just cause. 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 arbitrator may be received in evidence. The arbitrator 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 issue of the discharge.

In order for the arbitrator to find the discharge to be valid, the employer shall show:

- A. That the discharge was, beyond any reasonable doubt, for just cause; and
- B. That the employer made a reasonable effort to inform the employee that his performance was not satisfactory and that the employer made an attempt to assist the employee in correcting his deficiencies.

2. **Employee options.** If the arbitrator determines that the discharge was not for just cause, the employee shall have the following options:

- A. Retaining his employment position, in which case the employer shall immediately reinstate him to his prior position without any loss of seniority or accrued benefits; or
- B. Accepting the discharge, in which case the employee shall be entitled to receive all retirement benefits and severance pay in an amount equal to one year's salary for every 10 years of employment or fraction thereof. Severance pay shall be paid as monthly salary and not as a lump sum payment unless the employee requests otherwise.

§ 1703. Retirement

No employer shall retire any supervisory employee or salaried employee before that employee reaches the normal retirement age for a person in that employee's position, unless that employer shall pay to that employee:

1. Retirement. The full retirement benefits which that employee would have been entitled to receive if he had retired at the normal retirement age; and

2. Severance pay. Severance pay in an amount equal to one year's salary for every 10 years of employment or fraction thereof. Severance pay shall be paid as monthly salary and not as a lump sum payment unless the employee requests otherwise.

STATEMENT OF FACT

The practice of management and salaried personnel being discharged without just cause or being involuntarily retired at the discretion of their supervisors without any recourse is one that has been and continues to be a management prerogative that is unfair, unjust and discriminatory. This bill will require that the discharge of supervisory or salaried employees be only for just cause. It would also provide that persons retired early would be able to collect full retirement benefits and severance pay, as a means of discouraging unfair discharges and early retirements.