FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

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H. P. 1131 House of Representatives, March 21, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Tuttle of Sanford.

Cosponsors: Mr. Wood of Sanford, Mr. Rolde of York and Mr. Lancaster of Kittery.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-NINE

AN ACT Concerning Dispute Resolution under the Municipal Public Employees Labor Relations Statutes.

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

Sec. 1. 26 MRSA § 964, sub-§ 2, ¶C, as enacted by PL 1969, c. 424, § 1, is repealed and the following enacted in its place:

C. Engaging in a work stoppage, slowdown or strike in violation of section 965, subsection 4, or the black-listing of any public employer for the purpose of preventing it from filling employee vacancies.

Sec. 2. 26 MRSA § 965, sub-§ 1, ¶C, as enacted by PL 1969, c. 424, § 1, is amended to read:

C. To confer and negotiate in good faith with respect to wages, hours, working conditions, **employment security** and contract grievance arbitration, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies for the purpose of this paragraph, educational policies shall not include wages, hours, working conditions, **employment security** or contract grievance

arbitration; **nor shall it include any subject matter covered by the terms, wages, hours, working conditions and contract grievance arbitration unless that subject has been excluded from the provisions of this chapter**;

Sec. 3. 26 MRSA § 965, sub-§ 1, ¶E, as amended by PL 1973, c. 788, § 119, is further amended by adding at the end a new sentence to read:

A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth an impasse procedure culminating in a final and binding decision, to be invoked in the event of an impasse over the terms of an initial or renewal agreement.

Sec. 4. 26 MRSA § 965, sub-§ 4, 2nd ¶, as amended by PL 1969, c. 578, § 2-A, is repealed.

Sec. 5. 26 MRSA § 965, sub-§ 4, 3rd ¶, first sentence, as enacted by PL 1969, c. 424, § 1, is repealed and the following enacted in its place:

If the parties have not resolved their controversy by the end of the 45-day period, either party may, by written notice to the other, request that their differences be submitted for final and binding determination to a board of 3 arbitrators.

Sec. 6. 26 MRSA § 965, sub-§ 4, 3rd ¶, 2nd sentence, as enacted by PL 1969, c. 424, § 1, is repealed and the following enacted in its place:

If the employer notifies the bargaining agent of its desire to proceed to final and binding arbitration, then 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.

Sec. 7. 26 MRSA § 965, sub-§ 4, 4th ¶, first sentence, as amended by PL 1969, c. 578, § 2-B, is repealed and the following enacted in its place:

The arbitrators shall make determinations if reasonably possible within 30 days after the selection of the neutral arbitrator; such determinations may be made public by the arbitrators or either party; and if made by a majority of the arbitrators, such determinations will be final and binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations; and such determinations will be subject to review by the Superior Court in the manner specified by section 972. If the bargaining agent has notified the employer of its desire to proceed to final and binding arbitration, the employer shall have 15 days to reject the request or agree to submit matters not agreed upon to arbitration in accordance with this section. If the employer does not respond within 15 days, it shall be regarded as a rejection of the bargaining agent's request.

Sec. 8. 26 MRSA § 965, sub-§ 5, last sentence, as enacted by PL 1969, c. 424, § 1, is amended to read:

The services of the members of the State of Maine's Panel of Mediators, **to a**

maximum of 3 mediation days per case, and of the Maine Board of Arbitration and Conciliation are available to the parties without cost.

Sec. 9. 26 MRSA § 965, sub-§§ 7 and 8 are enacted to read:

7. Arbitration standards; implementation of the award. When there is no agreement between the parties pursuant to subsection 1, paragraph E, and wage rates or other conditions of employment under the proposed new or renewal agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

A. The lawful authority of the employer;

B. Stipulations of the parties;

C. The interest and welfare of the public and the financial ability of the unit of government to meet those costs, notwithstanding budget format;

D. Comparison of the wages, hours and conditions of employment of other employees performing similar services and with other employees generally;

(1) In public employment in comparable communities; and

(2) In private employment in comparable communities;

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

F. 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; and

G. Such 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 service.

All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies, and the employer shall submit all such items agreed to in the course of negotiation, or otherwise required by arbitration, within 10 days to the appropriate legislative bodies. The commencement of a new fiscal year after the initiation of arbitration procedures contained herein, but before the arbitration decision or its enforcement, shall not be deemed to render a dispute moot or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Awarded increases in rates of compensation or other monetary benefits may be retroactive to the commencement of such fiscal year. At any time the parties may, by stipulation, amend or modify an award of arbitration.

8. Strikes, rights and protections.

A. Participation in a strike shall be unlawful for any public employee who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board or recognized by the employer, or is included in an appropriate bargaining unit which provides for resolution of a labor dispute by referral to final and binding arbitration.

B. It shall be lawful for a public employee who is not prohibited from striking under paragraph A and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike after:

(1) The requirements of subsections 2, 3 and 4, relating to the resolutions of labor disputes, have been complied with in good faith; and

(2) The public employer has rejected the bargaining agent's notice to arbitrate pursuant to subsection 4.

C. When the strike occurring endangers the public health or safety, the public employer concerned may petition the board to make an investigation. If the board finds that there is imminent or present danger to the health and safety of the public, the board shall order that the labor dispute be submitted to final and binding arbitration pursuant to subsection 4.

D. No employee organization shall declare or authorize a strike of employees which is or would be in violation of this section. Complaints by a public employer that an employee organization has declared or authorized a strike of employees which is in violation of this section shall be filed with the board pursuant to section 968, subsection 5.

Sec. 10. 26 MRSA § 968, sub-§ 5, ¶G, as enacted by PL 1971, c. 609, § 9, is repealed and the following enacted in its place:

G. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply.

STATEMENT OF FACT

This bill provides parity in bargaining under the municipal public employees labor relations statutes between a public employer and public employee organizations. At present, many procedures for dispute resolution are unclear and ambiguous. This bill clarifies those procedures by establishing clear deadlines for certain actions by permitting the public employer to seek final and binding arbitration and by permitting public employee units to seek alternative methods of dispute resolution if the public employer fails to choose final and binding arbitration as a means of resolving a bargaining impasse.