

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 423

H. P. 380

House of Representatives, January 26, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Tuttle of Sanford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT Concerning Arbitration Involving Municipal Fire and Police
Departments and University of Maine Police.**

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

Sec. 1. 26 MRSA § 965, sub-§ 4-A is enacted to read:

4-A. Arbitration of controversies involving fire and police departments. Arbitration of controversies over salaries, pensions and insurance involving municipal fire and police departments and police personnel described under section 1024-A, subsection 1, paragraph F shall be as provided in this subsection.

A. Following fact finding as provided in subsection 3 and at the end of the 45-day period as provided in subsection 4, the parties may jointly agree to an arbitration procedure which will result in a binding determination of their controversy over salaries, pensions or insurance. These determinations shall be subject to review by the Superior Court in the manner specified by section 972.

B. If the parties do not jointly agree to a mutually satisfactory arbitration procedure within 10 days of the expiration 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 to be selected in the manner outlined in subsection 4, except that only Maine residents may be selected. Resolution of the controversy by the arbitrators shall be by final offer arbitration.

C. The procedure for such arbitration is as follows: As soon as possible after the selection of the neutral arbitrator, the 3 arbitrators or, if either party has not selected its arbitrator, the 2 arbitrators, as the case may be, shall meet with the parties or their representatives to schedule a hearing to be held within 14 days. At least 7 days prior to the scheduled hearing, each party shall submit in writing to the arbitrators its final offer on each of the items in controversy. After the hearing, each party has 4 days in which to submit in writing to the arbitrators amendments to its final offer on any or all of the items in controversy. The arbitrators, within 30 days of the expiration of the 4-day amendment period, if reasonably possible, shall select by majority vote the most reasonable offer for each item in controversy.

D. In arriving at their selection, the arbitrators are limited exclusively to evidence submitted by the parties on the following standards and shall select the final offers which most closely effect the purposes of this chapter. The standards to be used are:

- (1) The lawful authority of the employer;**
- (2) The value of the services performed by the members of the bargaining unit to the citizens in the municipality;**
- (3) The financial ability of the unit of government to meet proposed cost increases, including any possible changes in the local tax rate;**
- (4) Comparison of wage rates and other conditions of employment with those rates and conditions in similar communities;**
- (5) The physical, educational and mental qualifications necessary to perform the employment, together with the rate of occupational hazard, injury or disease;**
- (6) The decision recommended by the fact finder, if any;**
- (7) The average consumer prices for goods and services in the geographical area, known as the cost-of-living; and**
- (8) The stipulation of the parties.**

The arbitrators shall give immediate notice of their selection to the parties. The selection is binding on the parties and on the appropriate legislative body, subject to review by the Superior Court only in the manner specified by section 972.

E. In January of each regular session the Maine Labor Relations Board will report to the Legislature on the effectiveness of this subsection's approach to binding arbitration. This subsection is repealed March 1, 1986.

Sec. 2. 26 MRSA c. 21-A is enacted to read:

CHAPTER 21-A
PENALTIES FOR ILLEGAL STRIKES
BY EMPLOYEES SUBJECT
TO BINDING ARBITRATION

§ 1651. Strike prohibition

No public employee or public employee organization subject to binding arbitration under section 965, subsection 4-A, may engage in a strike or cause, instigate, encourage or condone a work stoppage, slowdown, strike or the blacklisting of a public employer to prevent him from 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 may not do the following:

- A. Automatically deduct membership dues from employee paychecks;
- B. Collect an agency fee from employees not a member of the organization; or
- C. 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 abilities described in subsection 1 for the specified period of time as the board shall determine. In the discretion of the board those abilities 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 be continued to the extent necessary to pay the fine and that the public employer transmit the money to the court. In fixing the duration of the forfeiture:

A. The board shall consider all the relevant facts and circumstances including, but not limited to:

- (1) The extent of any willful defiance of section 1651;
- (2) The impact of the strike on the public health, safety and welfare of the community; and
- (3) The financial resources of the employee organization; and

B. 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, is 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 may 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 may have occurred, the chief executive of the government body or subdivision involved, on the basis of such investigation and affidavits as he may deem appropriate, may 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 includes:

- 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, or a final decision if the employee appeals, 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 is not counted.

6. **Objections and restoration.** Any employee determined to have violated this chapter may appeal 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 is subject to the penalties of perjury. If the chief executive officer determines 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 determines that the affidavit and supporting proof fails to establish that the employee did not violate this chapter, he shall request a hearing on this issue before the Maine Labor Relations Board.

7. **Maine Labor Relations Board.** Within 20 days of the request of a chief executive officer, the Maine Labor Relations Board shall conduct a hearing as to whether an employee has violated this chapter. If the Board determines that a violation has occurred, it may, in its descretion, levy the penalty described in subsection 5 or a lesser monetary penalty.

8. **Additional penalties.** The chief executive officer, upon the final determination, including any appeal, 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 threatens or is about to do or is doing an act in violation of section 1651, the chief executive officer of the government involved may apply to the Superior Court for an injunction against the violation. If an order of the court enjoining or restraining such a violation does not receive compliance, the chief executive officer shall immediately apply to the Superior Court to punish such violation as a contempt of court.

STATEMENT OF FACT

This bill creates a system of binding arbitration on cost items for municipal fire and police personnel and University of Maine police. Cost items included are salaries, pensions or insurance. Arbitrators would have to be Maine Residents. The Maine Labor Relations Board would report to the legislature on the effectiveness of the system. The bill establishes specific penalties for illegal strikes. The bill contains a provision automatically repealing this new law in 5 years.