

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 867

S. P. 311

In Senate, February 17, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Usher of Cumberland.

STATE OF MAINE

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

AN ACT to Establish Arbitration Procedures and Rules Governing Employee Activities.

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Sec. 1. 26 MRSA § 964, sub-§ 2, ¶C, as enacted by PL 1969, c. 424, § 1, is repealed and the following enacted in its place: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 blacklisting of any public employer for the purpose of preventing it from filling employee vacancies.

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

D. To execute in writing any agreements arrived at, the term of any such such agreement to be subject to negotiation but shall not exceed 3 years; and

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Sec. 4. 26 MRSA § 965, sub-§ 4, 2nd ¶, as amended by PL 1969, c. 578, § 2-A, is repealed.

Sec. 5. 26 MRSA § 965, sub-§ 4, 3rd ¶, first sentence, as enacted by PL 1969, c. 424, § 1, is repealed.

Sec. 6. 26 MRSA § 965, sub-§ 4, 3rd ¶, as enacted by PL 1969, c. 424, § 1, is amended by adding after the first sentence a new sentence to read:

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. 7. 26 MRSA § 965, sub-§ 4, 3rd ¶, 2nd sentence, as enacted by PL 1969, c. 424, § 1, is amended to read:

The 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 such 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. 8. 26 MRSA § 965, sub-§ 4, 4th ¶, as last amended by PL 1975, c. 564, § 18, is repealed and the following enacted in their place:

The arbitrators shall make determinations if reasonably possible within 30 days after the selection of the neutral arbitrator; the determinations may be made public by the arbitrators or either party; and if made by a majority of the arbitrators, the 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 the binding determinations; and the 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. The results of all arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration proceeding, the arbitrator or the chairman of the arbitration panel will submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

Sec. 9. 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. 10. 26 MRSA § 965, sub-§§ 7, 8 and 9 are enacted to read:

7. Arbitration standards; implementation of the award. Where 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. Stipulation of the parties;
- C. The interest and welfare of the public and the financial ability of the unit of government to meet those costs;
- D. Comparison of the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (1) In the 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 this subsection, 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 public service or in private service.

8. Appropriations. 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 in this section, but before the arbitration decision or its enforcement, does not render a dispute moot or otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation or other monetary benefits may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the employer's rejection of the bargaining agent's request for arbitration or the initiation of arbitration proceedings, these

limitations are inapplicable, and the awarded increases may be retroactive to the commencement of the fiscal year. At any time the parties may, by stipulation, amend or modify an award of arbitration.

9. Strikes, rights and protections. Participation in a strike is governed by the following provisions.

A. Participation in a strike is 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 is 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. Where 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 set requirements that must be complied with to avoid or remove any imminent or present danger to the health and safety of the public. These requirements may include an order that the labor dispute be submitted to final and binding arbitration pursuant to subsection 4.

D. No employee organization may 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. 11. 26 MRSA § 968, sub-§ 5, ¶G, as enacted by PL 1971, c. 609, § 9, is amended to read:

G. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply ~~except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction.~~

STATEMENT OF FACT

If enacted, this bill would establish procedures under the Municipal Public Employee Labor Relations law for binding arbitration in contract disputes, and

failing to select or honor the arbitration standards option, employee and union penalties for concerted action are removed from current law. The Maine Labor Relations Board has oversight powers in dealing with actions that may be contrary to the public interest.