

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 390

6
7 H.P. 331

House of Representatives, February 1, 1983

8 On Motion of Representative Beaulieu of Portland referred to the
9 Committee on Labor. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Tuttle of Sanford.

Cosponsors: Representative Beaulieu of Portland, Representative
11 Gauvreau of Lewiston and Senator Hayes of Penobscot.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Concerning Arbitration Involving
18 Municipal Fire and Police Departments.
19

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

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

24 4-A. Arbitration of controversies involving
25 fire and police departments. Arbitration of contro-
26 versies over salaries, pensions and insurance involv-
27 ing municipal fire and police departments and police
28 personnel described under section 1024, subsection 1,
29 paragraph F, shall be as provided in this subsection.

30 A. Following fact finding as provided in subsec-
31 tion 3 and at the end of the 45-day period as
32 provided in subsection 4, the parties may jointly

1 agree to an arbitration procedure which will
2 result in a binding determination of their con-
3 troversy over salaries, pensions or insurance.
4 These determinations shall be subject to review
5 by the Superior Court in the manner specified by
6 section 972.

7 B. If the parties do not jointly agree to a
8 mutually satisfactory arbitration procedure
9 within 10 days of the expiration of the 45-day
10 period, then either party may, by written notice
11 to the other, request that their differences be
12 submitted to a board of 3 arbitrators to be se-
13 lected in the manner outlined in subsection 4,
14 except that only Maine residents may be selected.
15 Resolution of the controversy by the arbitrators
16 shall be by final offer arbitration.

17 C. The procedure for such arbitration shall be
18 as follows: As soon as possible after the selec-
19 tion of the neutral arbitrator, the 3 arbitrators
20 or, if either party shall not have selected its
21 arbitrator, the 2 arbitrators, as the case may
22 be, shall meet with the parties or their repre-
23 sentatives to schedule a hearing to be held
24 within 14 days. At least 7 days prior to the
25 scheduled hearing, each party shall submit in
26 writing to the arbitrators its final offer on
27 each of the items in controversy. After the
28 hearing, each party shall have 4 days in which to
29 submit in writing to the arbitrators amendments
30 to its final offer on any or all of the items in
31 controversy. The arbitrators, within 30 days of
32 the expiration of the 4-day amendment period, if
33 reasonably possible, shall select by majority
34 vote the most reasonable offer for each item in
35 controversy.

36 D. In arriving at their selection, the arbitra-
37 tors shall be limited exclusively to evidence
38 submitted by the parties on the following stan-
39 dards and shall select the final offers which
40 most closely effect the purposes of this chapter.
41 The standards to be used are:

42 (1) The lawful authority of the employer;

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

21 The arbitrators shall give immediate notice of
22 their selection to the parties. The selection
23 shall be binding on the parties and on the appro-
24 priate legislative body, subject to review by the
25 Superior Court only in the manner specified by
26 section 972.

27 E. In January of each regular session, the Maine
28 Labor Relations Board will report to the Legis-
29 lature on the effectiveness of this subsection's
30 approach to binding arbitration. This subsection
31 is repealed March 1, 1988.

32 Sec. 2. 26 MRSA c. 23 is enacted to read:

33 CHAPTER 23

34 PENALTIES FOR ILLEGAL STRIKES

1 BY EMPLOYEES SUBJECT

2 TO BINDING ARBITRATION

3 §1801. Strike prohibition

4 No public employee or public employee organiza-
5 tion subject to binding arbitration under section
6 965, subsection 4-A, may engage in a strike or cause,
7 instigate, encourage or condone a work stoppage,
8 slowdown or strike or the blacklisting of a public
9 employer for the purpose of preventing him from fill-
10 ing employee vacancies.

11 §1802. Employee organization violation and penalties

12 1. Penalties. An employee organization which
13 is determined by the Maine Labor Relations Board to
14 have violated section 1801 shall be unable to do the
15 following:

16 A. Automatically deduct membership dues from
17 employee paychecks;

18 B. Collect an agency fee from employees not mem-
19 bers of the organization; and

20 C. Require employees to join an employee orga-
21 nization upon being hired.

22 The penalties described in this section are not the
23 exclusive penalties for violation of section 1801.

24 2. Institute proceedings. If it appears
25 that a violation of section 1801 may have occurred,
26 proceedings before the Maine Labor Relations Board
27 may be instituted in the manner prescribed in sec-
28 tions 968, 979-H and 1029.

1 3. Determination. In determining whether an
2 employee organization has violated section 1801, the
3 board shall consider:

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

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

9 4. Penalties. If the board determines that an
10 employee organization has violated section 1801, the
11 board may order forfeiture of the abilities described
12 in subsection 1 for a specified period of time that
13 the board shall determine. In the discretion of the
14 board, abilities may be forfeited for an indefinite
15 period of time. The abilities may be restored upon
16 application, with notice to all interested parties,
17 if there is evidence of good faith compliance with
18 the requirements of section 1801 since the date of
19 the violation. Evidence of good faith may include
20 the successful negotiation, without a violation of
21 section 1801, of a contract covering the employees in
22 the unit affected by the violation. When a fine
23 imposed on an employee organization pursuant to an
24 injunction remains unpaid, after the exhaustion of
25 the cash and securities of the employee organization,
26 the board shall direct that membership dues deduc-
27 tions shall be continued to the extent necessary to
28 pay the fine and that the public employer shall
29 transmit the money to the court. In fixing the dura-
30 tion of the forfeiture:

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

34 (1) The extent of any willful defiance of
35 section 1801;

36 (2) The impact of the strike on the public
37 health, safety and welfare of the community;
38 and

1 (3) The financial resources of the employee
2 organization; and

3 B. The board may consider:

4 (1) The refusal of the employee organiza-
5 tion or the appropriate public employer or
6 the representative thereof, to participate
7 in good faith in the mediation and fact-
8 finding procedures; and

9 (2) Whether, if so alleged by the employee
10 organization, the appropriate public
11 employer or his representatives engaged in
12 such acts of extreme provocation as to
13 detract from the responsibility of the
14 employee organization for the strike.

15 In determining the financial resources of the
16 employee organization, the board shall consider both
17 the income and the assets of the employee organiza-
18 tion. In the event membership dues are collected by
19 the public employer, the books and records of the
20 public employer shall be prima facie evidence of the
21 amount so collected.

22 §1803. Employee violations and penalties

23 1. Presumption. For purposes of this chapter,
24 an employee who is absent from work without permis-
25 sion, or who abstains wholly or in part from the full
26 performance of his duties in his normal manner with-
27 out permission, on the date when a work stoppage,
28 slowdown or strike occurs, shall be presumed to have
29 violated section 1801.

30 2. Prohibition against consent to strike. No
31 person exercising any authority over a public
32 employee on behalf of any public employer may author-
33 ize or condone a work stoppage, slowdown or strike.

34 3. Determination. If it appears that a viola-
35 tion of section 1801 or subsection 2 may have
36 occurred, the chief executive of the government body

1 or subdivision involved may, on the basis of such
2 investigation and affidavits as he may deem appropri-
3 ate, determine whether or not a violation has
4 occurred. If the chief executive officer determines
5 that a violation has occurred, he may then determine
6 the names of employees who committed the violation.
7 That determination shall not be deemed to be final
8 until the completion of the procedures provided for
9 in this section. For the purposes of this chapter,
10 the chief executive officer shall include:

11 A. For State Government, the Governor;

12 B. For municipalities, the mayor or first
13 selectman;

14 C. For school administrative units, the chairman
15 of the school board; and

16 D. For the University of Maine, the chancellor,
17 for the Maine Maritime Academy, the superinten-
18 dent, for a vocational-technical institute or
19 school of practical nursing, the director.

20 4. Notice. The chief executive officer shall
21 notify each employee that he has been found to have
22 committed a violation, the date of the violation and
23 of his right to object to this determination. He
24 shall also notify the chief fiscal official of the
25 names of all the employees and of the total number of
26 days, or parts thereof, on which it has been deter-
27 mined that the violation occurred. Notice to each
28 employee shall be by personal service or by certified
29 mail to his last address filed by him with his
30 employer.

31 5. Payroll deductions. Not earlier than 30 nor
32 later than 90 days following the date of the determi-
33 nation or a final decision if the employee appeals,
34 the chief fiscal official of the government involved
35 shall deduct from the compensation of each public

1 employee an amount equal to twice his daily rate of
2 pay for each day or part thereof that it was deter-
3 mined that he had violated section 1801; this rate of
4 pay shall be computed as of the time of the viola-
5 tion. In computing this deduction, credit shall be
6 allowed for amounts already withheld from the
7 employee's compensation on account of his absence
8 from work or other withholding of services on that
9 day or days. In computing the 30 to 90-day period of
10 time following the determination of a violation and
11 where the employee's annual compensation is paid over
12 a period of time which is less than 52 weeks, that
13 period of time between the last day of the last pay-
14 roll period of the employment term in which the
15 violation occurred and the first day of the first
16 payroll period of the next succeeding employment term
17 shall not be counted.

18 6. Objections and restoration. Any employee
19 determined to have violated this chapter may appeal
20 by filing with the chief executive officer, within 20
21 days of the date on which notice was served or mailed
22 to him, his sworn affidavit, supported by available
23 documentary proof, containing a short and plain
24 statement of the facts upon which he relies to show
25 that the determination was incorrect. The affidavit
26 shall be subject to the penalties of perjury. If the
27 chief executive officer determines that the affidavit
28 and supporting proof establishes that the employee
29 did not violate this chapter, he shall sustain the
30 objection. If the chief executive officer determines
31 that the affidavit and supporting proof fails to
32 establish that the employee did not violate this
33 chapter, he shall request a hearing on this issue
34 before the Maine Labor Relations Board.

35 7. Maine Labor Relations Board. Within 20 days
36 of the request of a chief executive officer, the
37 Maine Labor Relations Board shall conduct a hearing
38 as to whether an employee has violated this chapter.
39 If the board determines that a violation has
40 occurred, it may in its discretion, levy the penalty
41 described in subsection 5 or a lesser monetary pen-
42 alty.

1 6. Automatically repeal this bill in 4 years;
2 and
3 7. Establish strike penalties.
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