

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 392

6
7 H.P. 333

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 Hobbins of Saco.

Cosponsors: Senator Carpenter of Aroostook and Senator Violette of
Aroostook.

11
12 STATE OF MAINE
13

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

17 AN ACT Providing Collective
18 Bargaining Rights to Judicial
19 Employees.
20

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

23 Sec. 1. 26 MRSA §979, as enacted by PL 1973, c.
24 774, is amended to read:

25 §979. Purpose

26 It is declared to be the public policy of this
27 State and it is the purpose of this chapter to pro-
28 mote the improvement of the relationship between the
29 State ~~of Maine~~ and its employees, and between the
30 Judicial Department and its employees, by providing a
31 uniform basis for recognizing the right of state
32 employees and judicial employees to join labor orga-
33 nizations of their own choosing and to be represented

1 by such organizations in collective bargaining for
2 terms and conditions of employment.

3 Sec. 2. 26 MRSA §979-A, sub-§4-A is enacted to
4 read:

5 4-A. Judicial employee. "Judicial employee"
6 means any employee of the Judicial Department per-
7 forming services within the department, except any
8 person:

9 A. Elected by popular vote;

10 B. Appointed to office pursuant to statute for a
11 specified term by the Governor;

12 C. Whose duties as deputy, administrative assis-
13 tant or secretary necessarily imply a confiden-
14 tial relationship with respect to matters subject
15 to collective bargaining, as between that person
16 and the Chief Justice;

17 D. Who is a temporary, seasonal or on-call
18 employee; or

19 E. Who has been employed for less than 30 days.

20 Sec. 3. 26 MRSA §979-A, sub-§5, as amended by PL
21 1981, c. 289, §11, is repealed and the following
22 enacted in its place:

23 5. Public employer. "Public employer" means all
24 the departments, agencies and commissions of the
25 executive branch of the State represented by the Gov-
26 ernor or his designee, or the Judicial Department
27 represented by the Chief Justice of the Supreme Judi-
28 cial Court or his designee. In the furtherance of
29 this chapter, the State and Judicial Department shall
30 be considered, respectively, as single employers, and
31 employment relations, policies and practices through-
32 out the state service shall be as consistent as
33 practicable. In the case of state employees, it is
34 the responsibility of the executive branch to nego-
35 tiate collective bargaining agreements and to admin-
36 ister these agreements. In the case of judicial
37 employees, it is the responsibility of the judicial
38 branch to negotiate collective bargaining agreements

1 and to administer these agreements. To coordinate
2 the employer position in the negotiation of agree-
3 ments in regard to state employees, the Legislative
4 Council or its designee shall maintain close liaison
5 with the Governor or his designee representing the
6 executive branch relative to the negotiation of cost
7 items in any proposed agreement. The Governor's
8 office or its designee is responsible for the
9 employer functions of the executive branch under this
10 chapter, and shall coordinate its collective bargain-
11 ing activities with operating agencies on matters of
12 agency concern. The Chief Justice or his designee is
13 responsible for the employer functions of the judi-
14 cial branch to act upon those portions of tentative
15 agreements negotiated by the executive branch or the
16 judicial branch which require legislative action.

17 Sec. 4. 26 MRSA §979-B, as enacted by PL 1973,
18 c. 774, is amended to read:

19 §979-B. Right of state or judicial employees to join
20 labor organizations

21 No one shall may directly or indirectly interfere
22 with, intimidate, restrain, coerce or discriminate
23 against state or judicial employees or a group of
24 state employees in the free exercise of their rights,
25 hereby given, voluntarily to join, form and partici-
26 pate in the activities of organizations of their own
27 choosing for the purposes of representation and col-
28 lective bargaining, or in the free exercise of any
29 other right under this chapter.

30 Sec. 5. 26 MRSA §979-C, sub-§2, as enacted by PL
31 1973, c. 774, is amended to read:

32 2. State and judicial employee prohibitions.
33 State and judicial employees, State employee orga-
34 nizations, their agents, members and bargaining
35 agents are prohibited from:

36 A. Interfering with, restraining or coercing
37 employees in the exercise of the rights guaran-
38 teed in section 979-B or the public employer in
39 the selection of its representative for purposes
40 of collective bargaining or the adjustment of
41 grievances;

1 B. Refusing to bargain collectively with the
2 public employer as required by section 979-D; or

3 C. Engaging in:

4 (1) A work stoppage;

5 (2) A slowdown;

6 (3) A strike; or

7 (4) The blacklisting of the public employer
8 for the purpose of preventing it from fill-
9 ing employee vacancies.

10 Sec. 6. 26 MRSA §979-D, sub-§1, ¶E, as enacted
11 by PL 1973, c. 774, is amended to read:

12 E.

13 (1) To confer and negotiate in good faith
14 with respect to wages, hours, working condi-
15 tions and contract grievance arbitration,
16 except that by such obligation neither party
17 shall be compelled to agree to a proposal or
18 be required to make a concession. All mat-
19 ters relating to the relationship between
20 the employer and employees shall be the sub-
21 ject of collective bargaining, except those
22 matters which are prescribed or controlled
23 by public law. Such matters appropriate for
24 collective bargaining to the extent they are
25 not prescribed or controlled by public law
26 include but are not limited to:

27 (a) Wage and salary schedules to the
28 extent they are inconsistent with rates
29 prevailing in commerce and industry for
30 comparable work within the State;

31 (b) Work schedules relating to
32 assigned hours and days of the week;

33 (c) Use of vacation or sick leave, or
34 both;

35 (d) General working conditions;

1 (e) Overtime practices; and
2 (f) Rules and regulations for person-
3 nel administration, except the follow-
4 ing: Rules and regulations relating to
5 applicants for employment in state or
6 judicial service and state classified
7 employees in an initial probationary
8 status, including any extensions
9 thereof, provided such rules and regu-
10 lations are not discriminatory by
11 reason of an applicant's race, color,
12 creed, sex or national origin.

13 (2) Paragraph E, subparagraph (1) shall not
14 be construed to be in derogation of or con-
15 travene the spirit and intent of the merit
16 system principles and personnel laws.

17 (3) Cost items shall be submitted for
18 inclusion in the Governor's next operating
19 budget within 10 days after the date on
20 which the agreement is ratified by the par-
21 ties. If the Legislature rejects any of the
22 cost items submitted to it, all cost items
23 submitted shall be returned to the parties
24 for further bargaining.

25 Sec.26 MRSA §979-D, sub-§4, ¶C, as enacted by PL
26 1973, c. 774, is amended to read:

27 C. In reaching a decision under this paragraph,
28 the arbitrator shall consider the following fac-
29 tors:

30 (1) The interests and welfare of the public
31 and the financial ability of the State Gov-
32 ernment to finance the cost items proposed
33 by each party to the impasse;

34 (2) Comparison of the wages, hours and
35 working conditions of the employees involved
36 in the arbitration proceeding with the
37 wages, hours and working conditions of other
38 employees performing similar services in
39 public and private employment in other
40 jurisdictions competing in the same labor
41 market;

1 (3) The over-all compensation presently
2 received by the employees including direct
3 wage compensation, vacation, holidays and
4 excused time, insurance and pensions, medi-
5 cal and hospitalization benefits, the conti-
6 nuity and stability of employment, and all
7 other benefits received;

8 (4) Such other factors not confined to the
9 foregoing, which are normally and
10 traditionally taken into consideration in
11 the determination of wages, hours and work-
12 ing conditions through voluntary collective
13 bargaining, mediation, fact-finding, arbi-
14 tration or otherwise between the parties, in
15 the public service or in private employment,
16 including the average consumer price index;

17 (5) The need of State Government and the
18 Judicial Department for qualified employees;

19 (6) Conditions of employment in similar
20 occupations outside State Government or the
21 Judicial Department;

22 (7) The need to maintain appropriate rela-
23 tionships between different occupations in
24 State Government or in the Judicial Depart-
25 ment; and

26 (8) The need to establish fair and reason-
27 able conditions in relation to job qualifi-
28 cations and responsibilities.

29 Sec. 7. 26 MRSA §979-E, sub-§2, as amended by PL
30 1975, c. 612, §1, is further amended to read:

31 2. In order to insure to employees the fullest
32 freedom in exercising the rights guaranteed by this
33 chapter, to insure a clear and identifiable community
34 of interest among employees concerned, and to avoid
35 excessive fragmentation among bargaining units in
36 State Government and in the Judicial Department, the
37 executive director of the board or his designee shall
38 decide in each case the unit appropriate for purposes
39 of collective bargaining.

1 Sec. 8. 26 MRSA, §979-F, sub-§1, as enacted by
2 PL 1973, c. 774, is amended to read:

3 1. Voluntary recognition. Any state employee
4 organization may file a request with the public
5 employer alleging that a majority of the state or
6 judicial employees in an appropriate bargaining unit
7 wish to be represented for the purpose of collective
8 bargaining between the public employer and the
9 employees' organization. Such request shall describe
10 the grouping of jobs or positions which constitute
11 the unit claimed to be appropriate and shall include
12 a demonstration of majority support. Such request for
13 recognition shall be granted by the public employer
14 unless the public employer desires that an election
15 determine whether the organization represents a
16 majority of the members in the bargaining unit.

17 Sec. 9. 26 MRSA §979-F, sub-§2, ¶A, as amended
18 by PL 1975, c. 612, §2, is further amended to read:

19 A. The executive director of the board or his
20 designee upon signed request of a public employer
21 alleging that one or more state or judicial
22 employees or state employee organizations have
23 presented to it a claim to be recognized as the
24 representative of a bargaining unit of state
25 employees or a bargaining unit of judicial
26 employees, or upon signed petition of at least
27 30% of a bargaining unit of state employees or of
28 a bargaining unit of judicial employees that they
29 desire to be represented by an organization,
30 shall conduct a secret ballot election to deter-
31 mine whether the organization represents a major-
32 ity of the members of the bargaining unit. Such
33 an election may be conducted at suitable work
34 locations or through the United States mail pro-
35 vided, nevertheless, that the procedures adopted
36 and employed by the Maine Labor Relations Board
37 shall maintain the anonymity of the voter from
38 both the employee organizations and the manage-
39 ment representatives involved.

40 Sec. 10. 26 MRSA §979-F, sub-§2, ¶B, as enacted
41 by PL 1973, c. 774, is amended to read:

1 B. The ballot shall contain the name of such
2 organization and that of any other organization
3 showing written proof of at least 10% representa-
4 tion of the state employees within the unit, or
5 of the judicial employees within the unit,
6 together with a choice for any state or judicial
7 employee to designate that he does not desire to
8 be represented by any bargaining agent. Where
9 more than one organization is on the ballot and
10 no one of the 3 or more choices receives a major-
11 ity vote of the state employees voting, a run-off
12 election shall be held. The run-off ballot shall
13 contain the 2 choices which received the largest
14 and 2nd largest number of votes. When an orga-
15 nization receives the majority of votes of those
16 voting, the executive director of the board shall
17 certify it as the bargaining agent. The bargain-
18 ing agent certified as representing a bargaining
19 unit shall be recognized by the public employer
20 as the sole and exclusive bargaining agent for
21 all of the employees in the bargaining unit
22 unless and until a decertification election by
23 secret ballot shall be held and the bargaining
24 agent declared by the executive director of the
25 board as not representing a majority of the unit.

26 **Sec. 11.** 26 MRSA §979-H, sub-§1, as enacted by
27 PL 1973, c. 774, is amended to read:

28 1. The board is empowered, as provided, to pre-
29 vent any person, the public employer, any state
30 employee, any judicial employee, any state employee
31 organization or any bargaining agent from engaging in
32 any of the prohibited acts enumerated in section
33 979-C. This power shall not be affected by any other
34 means of adjustment or prevention that has been or
35 may be established by agreement, law or otherwise.

36 **Sec. 12.** 26 MRSA §979-H, sub-§2, as amended by
37 PL 1975, c. 697, §11, is further amended to read:

38 2. The public employer, any state employee, any
39 judicial employee, any state employee organization or
40 any bargaining agent which believes that any person,
41 the public employer, any state employee, any judicial
42 employee, any state employee organization or any bar-
43 gaining agent has engaged in or is engaging in any

1 such prohibited practice may file a complaint with
2 the executive director of the board stating the
3 charges in that regard. No such complaint shall be
4 filed with the executive director until the complain-
5 ing party shall have served a copy thereof upon the
6 party complained of. Upon receipt of such complaint,
7 the executive director or his designee shall review
8 the charge to determine whether the facts as alleged
9 may constitute a prohibited act. If it is determined
10 that the facts do not, as a matter of law, constitute
11 a violation, the charge shall be dismissed by the
12 executive director, subject to review by the board.
13 If a formal hearing is deemed necessary by the execu-
14 tive director or by the board, the executive director
15 shall serve upon the parties to the complaint a
16 notice of the prehearing conference and of the hear-
17 ing before the board, that notice to designate the
18 time and place of hearing for the prehearing confer-
19 ence or the hearing, as appropriate, provided that no
20 hearing shall be held based upon any alleged prohib-
21 ited practice occurring more than 6 months prior to
22 the filing of the complaint with the executive direc-
23 tor. The party complained of shall have the right to
24 file a written answer to the complaint and to appear
25 in person or otherwise and give testimony at the
26 place and time fixed for the hearing. In the discre-
27 tion of the board, any other person or organization
28 may be allowed to intervene in that proceeding and to
29 present testimony. Nothing in this subsection shall
30 restrict the right of the board to require the execu-
31 tive director or his designee to hold a prehearing
32 conference on any prohibited practice complaint prior
33 to the hearing before the board and taking whatever
34 action, including dismissal, attempting to resolve
35 disagreements between the parties or recommending an
36 order to the board, as he may deem appropriate, sub-
37 ject to review by the board.

38 Sec. 13. 26 MRSA §979-H, sub-§6, as enacted by
39 PL 1973, c. 774, is amended to read:

40 6. Whenever a complaint is filed with the execu-
41 tive director of the board, alleging that the public
42 employer has violated section 979-C, subsection 1,
43 paragraph F or alleging that a state employee, a
44 judicial employee, or ~~state~~ employee organization or
45 bargaining agent has violated section 979-C, subsec-

1 tion 2, paragraph C, the party making the complaint
2 may simultaneously seek injunctive relief from the
3 Superior Court in the county in which the prohibited
4 practice is alleged to have occurred pending the
5 final adjudication of the board with respect to such
6 matter.

7 STATEMENT OF FACT

8 This bill amends the State Employees Labor Rela-
9 tions Act to include employees of the Judicial
10 Department, excluding judges, under its provisions.
11 The Chief Justice of the Supreme Judicial Court or
12 his designee will exercise the functions of the
13 employer under this bill.

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