

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 707

6
7 H.P. 556 House of Representatives, February 10, 1983

8 On Motion of Representative Brannigan 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.
Cosponsor: Representative Michael of Auburn.

11
12 STATE OF MAINE
13

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

17 AN ACT to Amend the Municipal Public
18 Employees Labor Relations Law.
19

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

22 Sec. 1. 26 MRSA §962, sub-§6, ¶F, as repealed
23 and replaced by PL 1969, c. 578, §1, is amended to
24 read:

25 F. Who has been employed less than 6 months; or

26 Sec. 2. 26 MRSA §962, sub-§6, ¶G, as enacted by
27 PL 1969, c. 578, §2, is amended to read:

28 G. Who is a temporary, seasonal or on-call
29 employee; or

30 Sec. 3. 26 MRSA §962, sub-§6, ¶H is enacted to
31 read:

1 H. "Temporary employee, seasonal employee or
2 substitute employee" means any employee who is
3 employed in a job or position that does not have
4 a job expectancy in excess of 6 months.

5 Sec. 4. 26 MRSA §962, sub-§8 is enacted to
6 read:

7 8. "Employee organization" means any lawful
8 association, labor organization, federation or coun-
9 cil having as a primary purpose the improvement of
10 wages, hours and other conditions of employment among
11 employees of public employers covered by this chap-
12 ter.

13 Sec. 5. 26 MRSA §964, sub-§2-A is enacted to
14 read:

15 2-A. Negotiation of union security. Nothing in
16 this chapter may be interpreted to prohibit the nego-
17 tiation of union security, excepting closed shop.

18 Sec. 6. 26 MRSA §965, sub-§1, ¶D, as enacted by
19 PL 1969, c. 424, §1, is amended to read:

20 D. To execute in writing any agreements arrived
21 at, the term terms, including the effective date
22 of those terms, of any such such agreement to be
23 subject to negotiation but shall not exceed 3
24 years; and

25 Sec. 7. 26 MRSA §965, sub-§1, ¶E, as amended by
26 PL 1973, c. 788, §119, is further amended to read:

27 E. To participate in good faith in the media-
28 tion, ~~fact-finding~~ and arbitration procedures re-
29 quired by this section.

30 Sec. 8. 26 MRSA §965, sub-§3, as amended by PL
31 1977, c. 696, §204, is repealed.

32 Sec. 9. 26 MRSA §965, sub-§4, as amended by PL
33 1975, c. 564, §18, is further amended to read:

34 4. Arbitration. In addition to the 30-day period
35 referred to in subsection 3, the parties shall have
36 15 more days, making a total period of 45 days from

1 the submission of findings and recommendations, in
2 which to make a good faith effort to resolve their
3 controversy.

4 If the parties have not resolved cannot resolve their
5 controversy by the end of said 45-day period the
6 mediation process, they may jointly agree to an arbi-
7 tration procedure which will result in a binding
8 determination of their controversy. Such Those
9 determinations will be subject to review by the Super-
10 ior Court in the manner specified by section 972.

11 If they do not jointly agree to such an arbitration
12 procedure within 10 days after the end of said 45-day
13 period the mediation process, then either party may,
14 by written notice to the other, request that their
15 differences be submitted to a board of 3 arbitrators.
16 The bargaining agent and the public employer shall
17 within 5 days of such that request each select and
18 name one arbitrator and shall immediately thereafter
19 notify each other in writing of the name and address
20 of the person so selected. The 2 arbitrators so se-
21 lected and named shall, within 10 days from such the
22 request, agree upon and select and name a neutral
23 arbitrator. If either party shall not select its
24 arbitrator or if the 2 arbitrators shall fail to
25 agree upon, select and name a neutral arbitrator
26 within said the 10 days, either party may request the
27 American Arbitration Association to utilize its
28 procedures for the selection of the neutral arbitra-
29 tor. As soon as possible after receipt of such that
30 request, the neutral arbitrator will be selected in
31 accordance with rules and procedures prescribed by
32 the American Arbitration Association for making such
33 the selection. The neutral arbitrator so selected
34 will not, without the consent of both parties, be the
35 same person who was selected as mediator pursuant to
36 subsection 2 nor any member of the fact-finding board
37 selected pursuant to subsection 3. As soon as pos-
38 sible after the selection of the neutral arbitrator,
39 the 3 arbitrators or if either party shall not have
40 selected its arbitrator, the 2 arbitrators, as the
41 case may be, shall meet with the parties or their
42 representatives, or both, forthwith, either jointly
43 or separately, make inquiries and investigations,
44 hold hearings, or take such other steps as they deem
45 appropriate. If the neutral arbitrator is selected by

1 utilizing the procedures of the American Arbitration
2 Association, the arbitration proceedings will be con-
3 ducted in accordance with the rules and procedures of
4 the American Arbitration Association. The hearing
5 shall be informal, and the rules of evidence prevail-
6 ing in judicial proceedings shall not be binding.
7 Any and all documentary evidence and other data
8 deemed relevant by the arbitrators may be received in
9 evidence. The arbitrators shall have the power to ad-
10 minister oaths and to require by subpoena the attend-
11 ance and testimony of witnesses, the production of
12 books, records and other evidence relative or perti-
13 nent to the issues represented to them for determina-
14 tion.

15 If the controversy is not resolved by the parties
16 themselves, the arbitrators shall proceed as follows:
17 With respect to a controversy over salaries, pensions
18 and insurance, the arbitrators will recommend terms
19 of settlement and may make findings of fact, such
20 recommendations and findings will be advisory only
21 and will be made, if reasonably possible, within 30
22 days after the selection of the neutral arbitrator,
23 the arbitrators may in their discretion, make such
24 recommendations and findings public, and either party
25 may make such recommendations and findings public if
26 agreement is not reached with respect to such find-
27 ings and recommendations within 10 days after their
28 receipt from the arbitrators, with With respect to a
29 any controversy over all subjects other than sal-
30 aries, pensions and insurance, the arbitrators shall
31 make determinations with respect thereto if reason-
32 ably possible within 30 days after the selection of
33 the neutral arbitrator; such those determinations may
34 be made public by the arbitrators or either party;
35 and if made by a majority of the arbitrators, such
36 those determinations will be binding on both parties
37 and the parties will enter an agreement or take what-
38 ever other action that may be appropriate to carry
39 out and effectuate such those binding determinations;
40 and such those determinations will be subject to
41 review by the Superior Court in the manner specified
42 by section 972. The results of all arbitration pro-
43 ceedings, recommendations and awards conducted under
44 this section shall be filed with the Maine Labor
45 Relations Board at the offices of its executive
46 director simultaneously with the submission of the

1 recommendations and award to the parties. In the
2 event the parties settle their dispute during the
3 arbitration proceeding, the arbitrator or the chair-
4 man of the arbitration panel will submit a report of
5 his activities to the Executive Director of the Maine
6 Labor Relations Board not more than 5 days after the
7 arbitration proceeding has terminated.

8 Sec. 10. 26 MRS §965, sub-§5, as amended by PL
9 1973, c. 458, §8, is further amended to read:

10 5. Costs. The costs for the services of the
11 mediator, ~~the members of the fact-finding board~~ and
12 of the neutral arbitrator including, if any, per diem
13 expenses, and actual and necessary travel and sub-
14 sistence expenses and the costs of hiring the prem-
15 ises where any mediation, ~~fact-finding~~ or arbitration
16 proceedings are conducted, will be shared equally by
17 the parties to the proceedings. All other costs will
18 be assumed by the party incurring them. The services
19 of the members of the State of Maine's Panel of
20 Mediators and of the Maine Board of Arbitration and
21 Conciliation are available to the parties without
22 cost.

23 Sec. 11. 26 MRS §967, sub-§3 is enacted to
24 read:

25 3. Qualification of employee organizations. No
26 employee organization may be eligible to petition for
27 exclusive recognition or to participate in a recogni-
28 tion election under this section, unless it has been
29 in existence for not fewer than 12 months. For pur-
30 poses of this subsection, an employee organization
31 has been "in existence" when it:

32 A. Has an already defined organizational struc-
33 ture;

34 B. Has a constitution, adopted by a majority
35 vote of the membership directly or in a repre-
36 sentative convention; and

37 C. Can demonstrate the financial ability to ful-
38 fill its obligations as bargaining agent as de-
39 defined in section 962. A bona fide dues structure

1 constitutes financial ability under this subsection.

2 STATEMENT OF FACT

3 This bill amends the Municipal Public Employees
4 Labor Relations Law in several ways. Section 3 of
5 the bill establishes a definition for "temporary
6 employee."

7 Section 4 establishes a definition of "employee
8 organization."

9 Section 5 enacts a new subsection permitting the
10 negotiation of union security agreements.

11 Sections 6 and 7 clarify 2 of the elements
12 included in the definition of "collective bargain-
13 ing."

14 Section 8 repeals the subsection that included
15 fact-finding as part of the collective bargaining
16 process.

17 Section 9 amends the provisions dealing with
18 arbitration. A 15-day extension on the period in
19 which findings and recommendations were to be made
20 has been eliminated, in conformity with the elimina-
21 tion of fact finding under section 8 of this bill.
22 Further, this section now requires arbitrators to
23 make determinations on all issues subject to contro-
24 versy.

25 Section 10 removes references to the fact-
26 finding board. Reference to the board is made unnec-
27 essary in light of section 8 of this bill which elim-
28 inates fact-finding.

29 Section 11 establishes a procedure for the qual-
30 ification of an employee organization to participate
31 in an election to determine a bargaining agent for
32 collective bargaining.

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