

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 943

7 H.P. 734

House of Representatives, March 1, 1983

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

10 EDWIN H. PERT, Clerk

Presented by Representative Higgins of Scarborough.

11
12 STATE OF MAINE
13

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

17 AN ACT to Modify the Dispute Resolution
18 Process under the Labor Statutes.
19

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

22 Sec. 1. 26 MRSA §965, sub-§2, ¶E, as amended by
23 PL 1979, c. 541, Pt. A, §170, is repealed and the
24 following enacted in its place:

25 E. The Executive Director of the Maine Labor
26 Relations Board shall serve as Executive Director
27 of the Panel of Mediators. He shall annually, on
28 or before the first day of July, report to the
29 Governor. The Executive Director of the Maine
30 Labor Relations Board, upon request of one or
31 both of the parties to a dispute between an
32 employer and its employees, shall or, upon his
33 own motion or motion of the Maine Labor Relations
34 Board, may proffer the services of one or more

1 members of the panel to be selected by him to
2 serve as mediator or mediators in such a dispute.

3 Once so selected, the mediator or mediators shall
4 conduct a hearing to determine if a bona fide
5 impasse actually exists and that the parties have
6 bargained in good faith. If the mediator or
7 mediators determine that either a bona fide
8 impasse does not exist or that one or both par-
9 ties have not bargained in good faith, then the
10 mediator or mediators may stop the mediation pro-
11 cess and order both parties back to the negotia-
12 tions table to bargain collectively until the
13 mediator or mediators determine otherwise.

14 If the mediator or mediators determine that the
15 parties should not return to the negotiations
16 table to bargain collectively, then the mediator
17 or mediators shall exert every reasonable effort
18 to encourage the parties to settle their differ-
19 ences by conference or other peaceful means.

20 If the mediator or mediators are unable to obtain
21 an amicable settlement of the dispute between the
22 parties, it shall then be the duty of the media-
23 tor or mediators to advise the parties of the
24 services available to assist them in the settle-
25 ment of their dispute. At this time, the media-
26 tor or mediators shall submit a written report to
27 both parties and the executive director stating
28 the action or actions that have been taken and
29 the results of their endeavors.

30 The parties shall have a period of 30 days after
31 receipt of the mediator report in which to make a
32 good faith effort to resolve their controversy.

33 If the parties have not resolved their contro-
34 versy by the end of that period, either party,
35 the mediator or mediators, or the Executive
36 Director of the Maine Labor Relations Board may
37 make public the contents of the mediation report
38 and the recommendations of the mediator or media-
39 tors.

40 Sec. 2. 26 MRSA §965, sub-§2, ¶G, as repealed
41 and replaced by PL 1973, c. 617, §2, is repealed.

1 Sec. 3. 26 MRSA §965, sub-§3, as amended by PL
2 1977, c. 696, §204, is repealed.

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

5 4. Arbitration. In addition to the 30-day period
6 referred to in subsection 3, the parties shall have
7 15 more days, making a total period of 45 days from
8 the submission of findings and recommendations, in
9 which to make a good faith effort to resolve their
10 controversy. If the parties have not resolved their
11 controversy by the end of the 30-day period, they may
12 jointly agree to an arbitration procedure which will
13 result in a binding determination of their contro-
14 versy, except as to salaries, pensions and insurance.
15 These determinations will be subject to review by the
16 Superior Court in the manner specified by section
17 972.

18 If the parties have not resolved their controversy by
19 the end of said 45-day period, they may jointly agree
20 to an arbitration procedure which will result in a
21 binding determination of their controversy. Such
22 determinations will be subject to review by the Super-
23 rior Court in the manner specified by section 972.

24 If they do not jointly agree to such an arbitration
25 procedure within 10 days after the end of said 45-day
26 the 30-day period, then either party may, by written
27 notice to the other, request that their differences
28 be submitted to a board of 3 arbitrators. The bar-
29 gaining agent and the public employer shall within 5
30 days of such that request each select and name one
31 arbitrator and shall immediately thereafter notify
32 each other in writing of the name and address of the
33 person so selected. The 2 arbitrators so selected and
34 named shall, within 10 days from such the request,
35 agree upon and select and name a neutral arbitrator.
36 If either party shall not select its arbitrator or if
37 the 2 arbitrators shall fail to agree upon, select
38 and name a neutral arbitrator within said the 10
39 days, either party may request the American Arbitra-
40 tion Association to utilize its procedures for the
41 selection of the neutral arbitrator. As soon as pos-
42 sible after receipt of such that request, the neutral
43 arbitrator will be selected in accordance with rules

1 and procedures prescribed by the American Arbitration
2 Association for making ~~such~~ the selection. The neu-
3 tral arbitrator so selected will not, without the
4 consent of both parties, be the same person who was
5 selected as mediator pursuant to subsection 2 nor any
6 member of the fact-finding board selected pursuant to
7 subsection 3. As soon as possible after the selection
8 of the neutral arbitrator, the 3 arbitrators or if
9 either party shall not have selected its arbitrator,
10 the 2 arbitrators, as the case may be, shall meet
11 with the parties or their representatives, or both,
12 forthwith, either jointly or separately, make
13 inquiries and investigations, hold hearings, or take
14 such other steps as they deem appropriate. If the
15 neutral arbitrator is selected by utilizing the
16 procedures of the American Arbitration Association,
17 the arbitration proceedings will be conducted in ac-
18 cordance with the rules and procedures of the Ameri-
19 can Arbitration Association. The hearing shall be
20 informal, and the rules of evidence prevailing in
21 judicial proceedings shall not be binding. Any and
22 all documentary evidence and other data deemed rele-
23 vant by the arbitrators may be received in evidence.
24 The arbitrators shall have the power to administer
25 oaths and to require by subpoena the attendance and
26 testimony of witnesses, the production of books,
27 records and other evidence relative or pertinent to
28 the issues represented to them for determination.

29 If the controversy is not resolved by the parties
30 themselves, the arbitrators shall proceed as follows:
31 With respect to a controversy over salaries, pensions
32 and insurance, the arbitrators will recommend terms
33 of settlement and may make findings of fact; ~~such~~
34 these recommendations and findings will be advisory
35 only and will be made, if reasonably possible, within
36 30 days after the selection of the neutral arbitra-
37 tor; the arbitrators may in their discretion, make
38 ~~such~~ these recommendations and findings public, and
39 either party may make ~~such~~ these recommendations and
40 findings public if agreement is not reached with
41 respect to ~~such~~ these findings and recommendations
42 within 10 days after their receipt from the arbitra-
43 tors; with respect to a controversy over subjects
44 other than salaries, pensions and insurance, the
45 arbitrators shall make determinations with respect
46 thereto if reasonably possible within 30 days after

1 the selection of the neutral arbitrator; ~~such~~ the
2 determinations may be made public by the arbitrators
3 or either party; and if made by a majority of the
4 arbitrators, ~~such~~ the determinations will be binding
5 on both parties and the parties will enter an agree-
6 ment or take whatever other action that may be appro-
7 priate to carry out and effectuate ~~such~~ these binding
8 determinations; and ~~such~~ these determinations will be
9 subject to review by the Superior Court in the manner
10 specified by section 972. The results of all arbi-
11 tration proceedings, recommendations and awards con-
12 ducted under this section shall be filed with the
13 Maine Labor Relations Board at the offices of its
14 executive director simultaneously with the submission
15 of the recommendations and award to the parties. In
16 the event the parties settle their dispute during the
17 arbitration proceeding, the arbitrator or the chair-
18 man of the arbitration panel will submit a report of
19 his activities to the Executive Director of the Maine
20 Labor Relations Board not more than 5 days after the
21 arbitration proceeding has terminated.

22 STATEMENT OF FACT

23 The purpose of this bill is to strengthen the
24 mediation process and ensure good faith bargaining
25 between local public employers and their employees.
26 Through a strengthened dispute resolution process,
27 impasse resulting from bad faith bargaining could be
28 avoided.

29 This bill attempts to create a dispute resolution
30 process that grants fair and equitable treatment to
31 both local public employers and employees.

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