

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1204

6  
7 H.P. 925

House of Representatives, March 15, 1983

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

10 EDWIN H. PERT, Clerk

Presented by Representative Diamond of Bangor.

Cosponsors: Representative Cox of Brewer, Representative Weymouth of  
11 West Gardiner 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 to Incorporate Last Best Offer  
18 Provisions into the Municipal Public Employees  
19 and the University of Maine Labor  
20 Relations Laws.  
21

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

24 Sec. 1. 26 MRSA §965, sub-§4, as amended by PL  
25 1975, c. 564, §18, is further amended to read:

26 4. Arbitration. In addition to the 30-day period  
27 referred to in subsection 3, the parties shall have  
28 15 more days, making a total period of 45 days from  
29 the submission of findings and recommendations, in  
30 which to make a good faith effort to resolve their  
31 controversy.

32 If the parties have not resolved their controversy by  
33 the end of ~~said~~ the 45-day period, they may jointly

1 agree to an arbitration procedure which will result  
2 in a binding determination of their controversy.  
3 Such determinations will be subject to review by the  
4 Superior Court in the manner specified by section  
5 972.

6 If they do not jointly agree to such an arbitration  
7 procedure within 10 days after the end of said the  
8 45-day period, then either party may, by written  
9 notice to the other, request that their differences  
10 be submitted to a board of 3 arbitrators. The bar-  
11 gaining agent and the public employer shall within 5  
12 days of such request each select and name one arbi-  
13 trator and shall immediately thereafter notify each  
14 other in writing of the name and address of the  
15 person so selected. The 2 arbitrators so selected and  
16 named shall, within 10 days from such request, agree  
17 upon and select and name a neutral arbitrator. If  
18 either party shall not select its arbitrator or if  
19 the 2 arbitrators shall fail to agree upon, select  
20 and name a neutral arbitrator within said the 10  
21 days, either party may request the American Arbitra-  
22 tion Association to utilize its procedures for the  
23 selection of the neutral arbitrator. As soon as possi-  
24 ble after receipt of such request, the neutral  
25 arbitrator ~~wi~~ shall be selected in accordance with  
26 rules and procedures prescribed by the American Arbi-  
27 tration Association for making such selection. The  
28 neutral arbitrator so selected will not, without the  
29 consent of both parties, be the same person who was  
30 selected as mediator pursuant to subsection 2 nor any  
31 member of the fact-finding board selected pursuant to  
32 subsection 3. As soon as possible after the selection  
33 of the neutral arbitrator, the 3 arbitrators or if  
34 either party shall not have selected its arbitrator,  
35 the 2 arbitrators, as the case may be, shall meet  
36 with the parties or their representatives, or both,  
37 forthwith, either jointly or separately, make  
38 inquiries and investigations, hold hearings, or take  
39 such other steps as they deem appropriate. If the  
40 neutral arbitrator is selected by utilizing the  
41 procedures of the American Arbitration Association,  
42 the arbitration proceedings will be conducted in ac-  
43 cordance with the rules and procedures of the Ameri-  
44 can Arbitration Association. The hearing shall be  
45 informal, and the rules of evidence prevailing in  
46 judicial proceedings shall not be binding. Any and

1 all documentary evidence and other data deemed rele-  
2 vant by the arbitrators may be received in evidence.  
3 The arbitrators shall have the power to administer  
4 oaths and to require by subpoena the attendance and  
5 testimony of witnesses, the production of books,  
6 records and other evidence relative or pertinent to  
7 the issues represented to them for determination.

8 If the controversy is not resolved by the parties  
9 themselves, the arbitrators shall proceed as follows:-  
10 With respect to a controversy over salaries, pensions  
11 and insurance, the arbitrators will recommend terms  
12 of settlement and may make findings of fact, such  
13 recommendations and findings will be advisory only  
14 and will be made, if reasonably possible, within 30  
15 days after the selection of the neutral arbitrator,  
16 the arbitrators may in their discretion, make such  
17 recommendations and findings public, and either party  
18 may make such recommendations and findings public if  
19 agreement is not reached with respect to such find-  
20 ings and recommendations within 10 days after their  
21 receipt from the arbitrators, with respect to a con-  
22 troversy over subjects other than salaries, pensions  
23 and insurance, the arbitrators shall make determina-  
24 tions with respect thereto if reasonably possible  
25 within 30 days after the selection of the neutral  
26 arbitrator, such determinations may be made public by  
27 the arbitrators or either party, and if made by a  
28 majority of the arbitrators, such determinations will  
29 be binding on both parties and the parties will enter  
30 an agreement or take whatever other action that may  
31 be appropriate to carry out and effectuate such bind-  
32 ing determinations, and such determinations will be  
33 subject to review by the Superior Court in the manner  
34 specified by section 972. Within 5 days after con-  
35 clusion of the hearing described in this subsection,  
36 each party shall file with the Executive Director of  
37 the Maine Labor Relations Board 5 copies of its  
38 statement of the last best offer setting forth the  
39 final agreement provisions proposed by that party.  
40 Immediately upon receipt of both such statements of  
41 the last best offer, the executive director shall  
42 simultaneously distribute a copy of each such state-  
43 ment of the last best offer to the opposing party and  
44 to the 3 arbitrators. The arbitrators shall make  
45 determinations with respect to all unresolved issues  
46 within 30 days after the selection of the neutral

1 arbitrator. Arbitrators shall treat all unresolved  
2 issues at one time and as a whole and, in reaching  
3 their determination, they shall accept the final  
4 agreement provisions proposed in the statement of the  
5 last best offer of one party or the other. The deci-  
6 sion of determination of the arbitrators, together  
7 with the resolved issues which have been agreed to by  
8 the parties, shall be final and binding upon both  
9 parties and the parties shall enter into an agreement  
10 or take whatever other action that may be appropriate  
11 to carry out and effectuate those binding determina-  
12 tions. Those determinations shall be subject to  
13 review by the the Superior Court in the manner speci-  
14 fied by section 972. The results of all arbitration  
15 proceedings, recommendations and awards conducted  
16 under this section shall be filed with the Maine  
17 Labor Relations Board at the offices of its executive  
18 director simultaneously with the submission of the  
19 recommendations and award to the parties. In the  
20 event the parties settle their dispute during the  
21 arbitration proceeding, the arbitrator or the chair-  
22 man of the arbitration panel will submit a report of  
23 his activities to the Executive Director of the Maine  
24 Labor Relations Board not more than 5 days after the  
25 arbitration proceeding has terminated.

26 Sec. 2. 26 MRSA §965, sub-§4-A is enacted to  
27 read:

28 4-A. Arbitration factors. In reaching a deci-  
29 sion under this section, the arbitrators shall con-  
30 sider the following factors:

31 A. The interests and welfare of the students and  
32 the public and the financial ability of the uni-  
33 versity, academy, vocational-technical institutes  
34 or state schools for practical nursing to finance  
35 the cost items proposed by each party to the  
36 impasse;

37 B. Comparison of the wages, hours and working  
38 conditions of the employees involved in the arbi-  
39 tration proceeding with the wages, hours and  
40 working conditions of other employees performing  
41 similar services in public and private employment  
42 competing in the same labor market;

1 C. The overall compensation presently received  
2 by the employees, including direct salary and  
3 wage compensation, vacation, holidays, life and  
4 health insurance, retirement and all other bene-  
5 fits received;

6 D. Such other factors not confined to paragraphs  
7 A to C, which are normally and traditionally  
8 taken into consideration in the resolution of  
9 disputes involving similar subjects of collective  
10 bargaining in public higher education;

11 E. The need of the public employer for qualified  
12 employees;

13 F. Conditions of employment in similar occupa-  
14 tions outside the municipality, town or subdivi-  
15 sion thereof, the school, water, sewer or other  
16 district, the Maine Turnpike Authority, or the  
17 county or any subdivision thereof;

18 G. The need to maintain appropriate relation-  
19 ships between different occupations in the munic-  
20 ipality, town or subdivision thereof, the school,  
21 water, sewer or other district, the Maine Turn-  
22 pike Authority or the county or any any subdivi-  
23 sion thereof; and

24 H. The need to establish fair and reasonable  
25 conditions in relation to job qualifications and  
26 responsibilities.

27 Sec. 3. 26 MRSA §1026, sub-§4, as amended by PL  
28 1977, c. 581, §§12 and 13, is repealed and the fol-  
29 lowing enacted in its place:

30 4. Arbitration.

31 A. In addition to the 30-day period referred to  
32 in section 965, subsection 3, the parties shall  
33 have 15 more days, making a total period of 45  
34 days from the submission of findings and recom-  
35 mendations, in which to make a good faith effort  
36 to resolve their controversy.

37 If the parties have not resolved their contro-  
38 versy by the end of the 45-day period, they may

1 jointly agree to an arbitration procedure which  
2 will result in a binding determination of their  
3 controversy. The determinations shall be subject  
4 to review by the Superior Court in the manner  
5 specified by section 1033.

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

1            ciation. The hearing shall be informal and the  
2            rules of evidence prevailing in judicial proceed-  
3            ings shall not be binding. Any and all documen-  
4            tary evidence and other data deemed relevant by  
5            the arbitrators may be received in evidence. The  
6            arbitrators may administer oaths and require by  
7            subpoena the attendance and testimony of wit-  
8            nesses, the production of books, records and  
9            other evidence relative or pertinent to the  
10           issues represented to them for determination.

11           Within 5 days after conclusion of the hearing de-  
12           scribed in this subsection, each party shall file  
13           with the Executive Director of the Maine Labor  
14           Relations Board 5 copies of its statement of the  
15           last best offer setting forth the final agreement  
16           provisions proposed by the party. Immediately  
17           upon receipt of both such statements of the last  
18           best offer, the executive director shall simulta-  
19           neously distribute a copy of each such statement  
20           of the last best offer to the opposing party and  
21           to the 3 arbitrators. The arbitrators shall make  
22           determinations with respect to all unresolved  
23           issues within 30 days after the selection of the  
24           neutral arbitrator. Arbitrators shall treat all  
25           unresolved issues at one time and as a whole and,  
26           in reaching their determination, they shall ac-  
27           cept the final agreement provisions proposed in  
28           the statement of the last best offer of one party  
29           or the other. The decision of determination of  
30           the arbitrators, together with the resolved  
31           issues which have been agreed to by the parties,  
32           shall be final and binding upon both parties and  
33           the parties shall enter into an agreement or take  
34           whatever other action that may be appropriate to  
35           carry out and effectuate the binding determina-  
36           tions. Those determinations shall be subject to  
37           review by the Superior Court in the manner speci-  
38           fied by section 1033. The results of all arbi-  
39           tration proceedings, recommendations and awards  
40           conducted under this section shall be filed with  
41           the Maine Labor Relations Board at the offices of  
42           the executive director simultaneously with the  
43           submission of the recommendations and awards to  
44           the parties. In the event that the parties  
45           settle their dispute during the arbitration pro-  
46           ceeding, the arbitrators shall submit a report of



1 their activities to the Executive Director of the  
2 Maine Labor Relations Board not more than 5 days  
3 after the arbitration proceeding has terminated.

4 B. In reaching a decision under this section,  
5 the arbitrators shall consider the following fac-  
6 tors:

7 (1) The interests and welfare of the stu-  
8 dents and the public and the financial abil-  
9 ity of the university, academy,  
10 vocational-technical institutes or state  
11 schools for practical nursing to finance the  
12 cost items proposed by each party to the  
13 impasse;

14 (2) Comparison of the wages, hours and  
15 working conditions of the employees involved  
16 in the arbitration proceeding with the  
17 wages, hours and working conditions of other  
18 employees performing similar services in  
19 public and private employment competing in  
20 the same labor market;

21 (3) The overall compensation presently  
22 received by the employees, including direct  
23 salary and wage compensation, vacation,  
24 holidays, life and health insurance, retire-  
25 ment and all other benefits received;

26 (4) Such other factors not confined to  
27 subparagraphs (1) to (3), which are normally  
28 and traditionally taken into consideration  
29 in the resolution of disputes involving  
30 similar subjects of collective bargaining in  
31 public higher education;

32 (5) The need of the university, academy,  
33 vocational-technical institutes or state  
34 schools for practical nursing for qualified  
35 employees;

36 (6) Conditions of employment in similar  
37 occupations outside the university, academy,  
38 vocational-technical institutes or state  
39 schools for practical nursing;

