

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

(EMERGENCY)  
(New Draft of H.P. 304, L.D. 363)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

---

Legislative Document No. 1350

---

H.P. 1043 House of Representatives, March 29, 1983  
Reported by Representative Beaulieu from the Committee on Labor and  
printed under Joint Rule 2.

EDWIN H. PERT, Clerk

---

STATE OF MAINE

---

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

---

AN ACT to Provide for the Negotiation of  
Seniority Provisions for Teachers.

---

Emergency preamble. Whereas, Acts of the Legis-  
lature do not become effective until 90 days after  
adjournment unless enacted as emergencies; and

Whereas, the Supreme Judicial Court of Maine, in  
the case of Paradis vs. S.A.D. #33 decided on June 7,  
1982, and a subsequent decision of the Maine Labor  
Relations Board determined that the statute governing  
the elimination of teaching positions in public  
schools does not permit the negotiation of a strict  
seniority provision; and

Whereas, it is in the best interests of education  
to remove the uncertainties that exist as a result of  
this decision and to clarify the law relating to  
negotiation of seniority provisions between public  
school committees or directors and bargaining agents  
representing teachers; and

1           Whereas, in the judgment of the Legislature,  
2 these facts create an emergency within the meaning of  
3 the Constitution of Maine and require the following  
4 legislation as immediately necessary for the preser-  
5 vation of the public peace, health and safety; now,  
6 therefore,

7           Be it enacted by the People of the State of Maine as  
8 follows:

9           Sec. 1. 20 MRSA §161, sub-§5, as amended by PL  
10 1977, c. 580, §§16 and 17, is further amended to  
11 read:

12           5. Shall nominate teachers; election to be  
13 approved by committee; probationary period; teachers  
14 may be elected under contract. He shall nominate all  
15 teachers, subject to such regulations governing sal-  
16 aries and the qualifications of teachers as the  
17 school committee or school directors shall make, and  
18 upon the approval of nominations by ~~said~~ the commit-  
19 tee or directors, he may employ teachers so nominated  
20 and approved for such terms as he may deem proper,  
21 subject to the approval of the school committee or  
22 school directors. After a probationary period of not  
23 to exceed 2 years, subsequent contracts of duly cer-  
24 tified teachers shall be for not less than 2 years.  
25 Unless a duly certified teacher receives written  
26 notice to the contrary at least 6 months before the  
27 terminal date of the contract, the contract shall be  
28 extended automatically for one year and similarly in  
29 subsequent years although the right to an extension  
30 for a longer period of time through a new contract is  
31 specifically reserved to the contracting parties.  
32 Just cause for dismissal or nonrenewal may be a nego-  
33 tiable item in accordance with the procedure set  
34 forth in Title 26, ~~e-~~ chapter 9-A, for teachers who  
35 have served beyond the probationary period. After a  
36 probationary period of 2 years, any teacher, who  
37 receives notice in accordance with this section that  
38 his contract is not going to be renewed, may during  
39 the 15 days following ~~such~~ notification request  
40 a hearing with the school committee or governing board.  
41 He may request reasons. The hearing shall be private  
42 except by mutual consent and except that either or  
43 both parties may be represented by counsel. ~~Such~~ The  
44 hearing must be granted within 30 days of the receipt  
45 of the teacher's request.

1 The right to terminate a contract, after due notice  
2 of 90 days, is reserved to the school committee or  
3 school directors when changes in local conditions  
4 warrant the elimination of the teaching position for  
5 which the contract was made. In case the superinten-  
6 dent of schools and the school committee or school  
7 directors fail to legally elect a teacher, the com-  
8 missioner shall have authority to appoint a substi-  
9 tute teacher who shall serve until ~~such~~ that election  
10 is made. The order of layoff and recall shall be a  
11 negotiable item in accordance with the procedures set  
12 forth in Title 26, chapter 9-A, provided that in any  
13 negotiated agreement the criteria negotiated by the  
14 school committee or school directors and the bargain-  
15 ing agent to establish the order of layoff and recall  
16 may include, but shall not be limited to, seniority.

17 Sec. 2. 20-A MRSA §13201, last ¶, as enacted by  
18 PL 1981, c. 693, §§5 and 8, is amended to read:

19 The right to terminate a contract, after due  
20 notice of 90 days, is reserved to the school commit-  
21 tee or school directors when changes in local condi-  
22 tions warrant the elimination of the teaching posi-  
23 tion for which the contract was made. The order of  
24 layoff and recall shall be a negotiable item in ac-  
25 cordance with the procedures set forth in Title 26,  
26 chapter 9-A, provided that in any negotiated agree-  
27 ment, the criteria negotiated by the school committee  
28 or school directors and the bargaining agent to  
29 establish the order of layoff and recall may include,  
30 but shall not be limited to, seniority.

31 Sec. 3. Transition provision. Seniority provi-  
32 sions in existing collective bargaining agreements  
33 with teachers shall be considered legal and valid  
34 from the date of enactment of this new draft until  
35 the expiration of the individual bargaining agree-  
36 ments or until the effective date of this Act, which-  
37 ever date occurs later.

38 Emergency clause. In view of the emergency cited  
39 in the preamble, this Act shall take effect when  
40 approved, except section 2 which will become effec-  
41 tive July 1, 1983.

1 STATEMENT OF FACT

2 The case of Paradis vs. S.A.D. #33 and a subse-  
3 quent decision of the Maine Labor Relations Board  
4 determined that the statutes governing the elimina-  
5 tion of teaching positions in Maine public schools  
6 doe not permit the negotiation of a strict seniority  
7 provision, but instead, that school officials should  
8 follow a general standard of making such decisions  
9 "in the best interests of education." Because it had  
10 previously been believed that a seniority principle  
11 existed in the law, this ruling created great uncer-  
12 tainty on the subject, especially in regard to the  
13 negotiation of seniority provisions between public  
14 employers of teachers and bargaining agents repre-  
15 senting teachers.

16 This new draft clarifies the law on the subject.  
17 Under this new draft, seniority shall not be used by  
18 school committees or directors as the sole criteria  
19 in establishing the order of layoff and recall of  
20 teachers. While strict seniority clauses cannot be  
21 used as exclusive criteria, seniority is a mandatory  
22 subject for collective bargaining in cases dealing  
23 with layoffs and recalls if either party to the nego-  
24 tiations wishes it. This reaffirms the Legislature's  
25 belief in the integrity of the collective bargaining  
26 process and the ability of the local parties to  
27 determine the weight and importance of seniority  
28 under local conditions through that process.

29 In addition, section 2 validates existing con-  
30 tracts, many of which were agreed on before the  
31 Paradis decision changed previous beliefs on the  
32 legal status of seniority. Seniority provisions in  
33 existing collective bargaining agreements shall be  
34 considered legal and binding from the date of enact-  
35 ment of this new draft until the expiration of the  
36 agreements or the effective date of this Act, which-  
37 ever occurs later.

38 2998032483