

MAINE STATE LEGISLATURE

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L.D. 1678

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(Filing No. H-427)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
111TH LEGISLATURE
FIRST REGULAR SESSION

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COMMITTEE OF CONFERENCE AMENDMENT "A" to H.P.
1267, L.D. 1678, Bill, "AN ACT to Encourage Prompt
Resolution of Public Employee Labor Disputes."

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10 Amend the bill by inserting after section 2 the
11 following:

12 'Sec. 3. 26 MRSA §979-A, sub-§3-A is enacted to
13 read:

14 3-A. Economic issue. "Economic issue" means an
15 issue that concerns wages, pensions or insurance.

16 Sec. 4. 26 MRSA §979-D, sub-§4, as enacted by PL
17 1973, c. 774, is repealed and the following enacted
18 in its place:

19 4. Arbitration.

20 A. A bargaining agent may request arbitration
21 only when:

22 (1) A period of 45 days has passed from the
23 submission of the findings and recommenda-
24 tions contained in the fact-finders' report,
25 which 45-day period consists of the 30-day
26 period referred to in subsection 3, plus 15
27 more days; and

28 (2) Either 60 days have passed since the
29 expiration date of the most recent collec-
30 tive bargaining agreement for the bargaining
31 unit, or the bargaining unit has never
32 previously had a collective bargaining
33 agreement.

34 B. The bargaining agent shall make the request

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1 for arbitration by notifying the executive direc-
2 tor and by serving written notice upon the
3 employer or its representative.

4 C. Upon notice of the bargaining agent's request
5 for arbitration, the parties shall have 7 days
6 from receipt of the notice to jointly agree to an
7 arbitration procedure which shall result in a
8 binding determination of their controversy; the
9 agreed upon plan shall include the number of
10 arbitrators, the means of selection of the arbi-
11 trators and the form of arbitration. The agreed
12 upon plan shall be filed within the 7-day period
13 with the executive director.

14 D. When the parties do not agree upon an arbi-
15 tration procedure as provided for in paragraph C,
16 either party to the dispute may implement the
17 procedures provided for in this subsection by
18 notifying the executive director and the other
19 party to the dispute of the failure to agree.
20 Upon serving that notice, the serving party shall
21 request the American Arbitration Association to
22 submit to each of the parties identical lists of
23 7 names of arbitrators who would be eligible and
24 available to act as a neutral arbitrator in the
25 existing controversy. Within 7 days from the
26 date when both parties are in receipt of the
27 list, they shall meet for the purpose of select-
28 ing an arbitrator. Selection of the single
29 arbitrator shall be by means prescribed by the
30 American Arbitration Association.

31 Upon notice of selection, the arbitrator shall
32 set the time and place for a hearing to be held.

33 The arbitrator shall call the hearing within 14
34 days of his notice of selection. If the selected
35 arbitrator can not begin the hearing within the
36 14-day period, he may ask the executive director
37 for an extension. The executive director may, at
38 his discretion, grant the extension which may be

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1 to a time certain or until the arbitrator has
2 completed other specified duties. The decision
3 of the executive director to grant or not to
4 grant an extension is final. At least 7 days
5 prior to the hearing, the arbitrator shall pro-
6 vide notice of the time and place of the hearing
7 to the employer, bargaining agent and executive
8 director.

9 Not less than 2 days prior to the commencement of
10 the hearing, each party shall file with the
11 executive director and the arbitrator and deliver
12 to the other party a proposed collective bargain-
13 ing agreement, in numbered paragraphs, which that
14 party is willing to execute and the cost data for
15 all provisions of the proposed agreement. At the
16 commencement of the hearing, each party shall
17 file with the arbitrator a reply setting forth
18 those paragraphs of the proposed agreement of the
19 other party which it is willing to accept, and
20 those paragraphs of the proposed agreement of the
21 other party which it is unwilling to accept,
22 together with any alternative contract language
23 which it would accept in lieu of those paragraphs
24 which it is unwilling to accept. At any time
25 prior to the expiration of the 10-day period
26 after the taking of the testimony, the parties
27 may jointly file with the arbitrator stipulations
28 setting forth the agreement provisions which both
29 parties have agreed to accept. Within 5 days
30 after the conclusion of taking testimony, the
31 arbitrator shall forward to each party and to the
32 executive director an arbitration statement,
33 setting forth in numbered paragraphs all agree-
34 ment provisions agreed upon by both parties in
35 the proposed agreements, the replies and the
36 stipulations, and stating in numbered paragraphs
37 those issues which are resolved. The arbitration
38 statement shall set forth in numbered paragraphs
39 all of the unresolved items and identify which of
40 the unresolved items are economic issues. The
41 determination of the arbitrator as to the issues

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1 in dispute and as to which issues are economic
2 shall be conclusive. Within 10 days after the
3 conclusion of the taking of testimony, each party
4 shall file with the arbitrator, with a copy to
5 the opposing party, its statement of last best
6 offer setting forth, in numbered paragraphs cor-
7 responding to the statement of unresolved issues
8 contained in the arbitration statement, the final
9 agreement proposed by that party. Within 20 days
10 after the last day for filing the statements of
11 last best offer, the arbitrator shall issue his
12 decision on all unresolved issues set forth in
13 the arbitration statement. A copy of the deci-
14 sion shall be distributed to each party and to
15 the executive director. The arbitrator shall
16 treat each unresolved issue set forth in the
17 arbitration statement as a separate question to
18 be decided by him. In deciding each economic
19 issue, the arbitrator shall accept the final
20 provision relating to such unresolved issue as
21 contained in the statement of last best offer of
22 one party or the other party. In deciding all
23 other questions, the arbitrator shall accept the
24 final provision relating to such unresolved issue
25 as contained in the statement of last best offer
26 of one party or the other party, except when the
27 arbitrator finds that a more equitable resolution
28 of the question may be reached by the arbitrator
29 writing a different provision than either party
30 offered on the question.

31 Within 10 days after the issuance of the
32 arbitrator's decision, the parties shall sign an
33 agreement binding each party to the decision,
34 unless within that 10-day period the parties both
35 agree to a different agreement and execute that
36 agreement in the form of a binding contract.
37 When the final contract differs from the
38 arbitrator's decision, a copy of the contract
39 shall be forwarded to the executive director.

40 The arbitration hearing shall be conducted in ac-

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1 cordance with the rules and procedures of the
2 American Arbitration Association. The hearing
3 shall be informal, and the rules of evidence pre-
4 vailing in judicial proceedings shall not be
5 binding. Any documentary evidence and other data
6 deemed relevant by the arbitrator may be received
7 in evidence. The fact-finders' report will be in
8 all cases the first evidence received by the
9 arbitrator.

10 E. The arbitrator or each of the arbitrators, in
11 those cases where the parties have agreed to a
12 procedure requiring more than one arbitrator,
13 shall have the power to administer oaths and to
14 require by subpoena the attendance and testimony
15 of witnesses, and the production of books,
16 records and other evidence relative or pertinent
17 to the issues presented to them for determina-
18 tion.

19 F. The final decision of the arbitrator or arbi-
20 trators shall be subject to review by the Supe-
21 rior Court in the manner specified by section
22 979-M.

23 G. In reaching a decision under this paragraph,
24 the arbitrator shall consider the following fac-
25 tors:

26 (1) The negotiations between the parties
27 prior to arbitration;

28 (2) The interests and welfare of the public
29 and financial ability of the State to
30 finance the cost items proposed by each
31 party to the dispute;

32 (3) Changes in the cost of living;

33 (4) The interests and welfare of the
34 employee group;

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- 1 (5) Comparison of the wages, hours and
2 working conditions, including, but not
3 limited to, hazards of the job, of the
4 employees involved in the arbitration pro-
5 ceeding with the wages, hours and working
6 conditions of other employees performing
7 similar services in public and private
8 employment in other jurisdictions competing
9 in the same labor market;
- 10 (6) The overall compensation presently
11 received by the employees, including direct
12 wage compensation, vacation, holidays and
13 excused time, insurance and pensions, medi-
14 cal and hospitalization benefits, the conti-
15 nunity and stability of employment and all
16 other benefits needed;
- 17 (7) Such other factors not confined to this
18 paragraph which are normally and
19 traditionally taken into consideration in
20 the determination of wages, hours and work-
21 ing conditions through voluntary collective
22 bargaining, mediation, fact-finding, arbi-
23 tration or otherwise between the parties, in
24 the public service or in private employment,
25 including wage and price statistics compiled
26 by the State or Federal Government;
- 27 (8) The need of the public employer for
28 qualified employees;
- 29 (9) Conditions of employment in similar
30 occupations outside the State;
- 31 (10) The need to maintain appropriate rela-
32 tionships between different occupations in
33 the State; and
- 34 (11) The need to establish fair and reason-
35 able conditions in relation to job qualifi-
36 cations and responsibilities.

