

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 925, L.D. 1204)  
2 (New Title)

3 FIRST REGULAR SESSION  
4

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5 ONE HUNDRED AND ELEVENTH LEGISLATURE  
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7 Legislative Document

No. 1678

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9 H.P. 1267

House of Representatives, May 24, 1983

10 Reported by the Minority from the Committee on Labor and printed  
11 under Joint Rule 2.

12 Original bill sponsored by Representative Diamond of Bangor.  
Cosponsored by Representative Cox of Brewer, Representative Weymouth of  
West Gardiner and Senator Hayes of Penobscot.

EDWIN H. PERT, Clerk

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13  
14 STATE OF MAINE  
15

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16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-THREE  
18

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19 AN ACT to Encourage Prompt Resolution  
20 of Public Employee Labor Disputes.  
21

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

24 Sec. 1. 26 MRSA §962, sub-§3-A is enacted to  
25 read:

26 3-A. Economic issue. "Economic issue" means an  
27 issue that concerns wages, pensions or insurance.

28 Sec. 2. 26 MRSA §965, sub-§4, as amended by PL  
29 1975, c. 564, §18, is repealed and the following  
30 enacted in its place:

31 4. Arbitration.

1        A. A bargaining agent may request arbitration  
2        only when:

3                (1) A period of 45 days has passed from the  
4                submission of the findings and recommenda-  
5                tions contained in the fact-finders' report,  
6                which 45-day period consists of the 30-day  
7                period referred to in subsection 3, plus 15  
8                more days; and

9                (2) Either 60 days have passed since the  
10               expiration date of the most recent collec-  
11               tive bargaining agreement for the bargaining  
12               unit, or the bargaining unit has never  
13               previously had a collective bargaining  
14               agreement.

15        B. The bargaining agent shall make the request  
16        for arbitration by notifying the executive direc-  
17        tor and by serving written notice upon the  
18        employer or its representative.

19        C. Upon notice of the bargaining agent's request  
20        for arbitration, the parties shall have 7 days  
21        from receipt of the notice to jointly agree to an  
22        arbitration procedure which shall result in a  
23        binding determination of their controversy; the  
24        agreed upon plan shall include the number of  
25        arbitrators, the means of selection of the arbi-  
26        trators and the form of arbitration. The agreed  
27        upon plan shall be filed within the 7-day period  
28        with the executive director.

29        D. When the parties do not agree upon an arbi-  
30        tration procedure as provided for in paragraph C,  
31        either party to the dispute may implement the  
32        procedures provided for in this subsection by  
33        notifying the executive director and the other  
34        party to the dispute of the failure to agree.  
35        Upon serving that notice, the serving party shall  
36        request the American Arbitration Association to  
37        submit to each of the parties identical lists of  
38        7 names of arbitrators who would be eligible and  
39        available to act as a neutral arbitrator in the  
40        existing controversy. Within 7 days from the  
41        date when both parties are in receipt of the  
42        list, they shall meet for the purpose of select-

1 ing an arbitrator. Selection of the single  
2 arbitrator shall be by means prescribed by the  
3 American Arbitration Association.

4 Upon notice of selection, the arbitrator shall  
5 set the time and place for a hearing to be held  
6 within the municipality involved or within the  
7 municipality wherein the governmental unit  
8 involved is located.

9 The arbitrator shall call the hearing within 14  
10 days of his notice of selection. If the selected  
11 arbitrator can not begin the hearing within the  
12 14-day period, he may ask the executive director  
13 for an extension. The executive director may, at  
14 his discretion, grant the extension which may be  
15 to a time certain or until the arbitrator has  
16 completed other specified duties. The decision  
17 of the executive director to grant or not to  
18 grant an extension is final. At least 7 days  
19 prior to the hearing, the arbitrator shall pro-  
20 vide notice of the time and place of the hearing  
21 to the employer, bargaining agent and executive  
22 director.

23 Not less than 2 days prior to the commencement of  
24 the hearing, each party shall file with the  
25 executive director and the arbitrator and deliver  
26 to the other party a proposed collective bargain-  
27 ing agreement, in numbered paragraphs, which that  
28 party is willing to execute and the cost data for  
29 all provisions of the proposed agreement. At the  
30 commencement of the hearing, each party shall  
31 file with the arbitrator a reply setting forth  
32 those paragraphs of the proposed agreement of the  
33 other party which it is willing to accept, and  
34 those paragraphs of the proposed agreement of the  
35 other party which it is unwilling to accept,  
36 together with any alternative contract language  
37 which it would accept in lieu of those paragraphs  
38 which it is unwilling to accept. At any time  
39 prior to the expiration of the 10-day period  
40 after the taking of the testimony, the parties  
41 may jointly file with the arbitrator stipulations  
42 setting forth the agreement provisions which both  
43 parties have agreed to accept. Within 5 days  
44 after the conclusion of taking testimony, the

1 arbitrator shall forward to each party and to the  
2 executive director an arbitration statement,  
3 setting forth in numbered paragraphs all agree-  
4 ment provisions agreed upon by both parties in  
5 the proposed agreements, the replies and the  
6 stipulations, and stating, in numbered para-  
7 graphs, those issues which are resolved. The  
8 arbitration statement shall set forth in numbered  
9 paragraphs all of the unresolved items and iden-  
10 tify which of the unresolved items are economic  
11 issues. The determination of the arbitrator as  
12 to the issues in dispute and as to which issues  
13 are economic shall be conclusive. Within 10 days  
14 after the conclusion of the taking of testimony,  
15 the parties shall file with the arbitrator, with  
16 a copy to the opposing party, its statement of  
17 last best offer setting forth, in numbered para-  
18 graphs corresponding to the statement of  
19 unresolved issues contained in the arbitration  
20 statement, the final agreement proposed by that  
21 party. Within 20 days after the last day for  
22 filing the statements of last best offer, the  
23 arbitrator shall issue his decision on all  
24 unresolved issues set forth in the arbitration  
25 statement. A copy of the decision shall be dis-  
26 tributed to each party and to the executive  
27 director. The arbitrator shall treat each  
28 unresolved issue set forth in the arbitration  
29 statement as a separate question to be decided by  
30 him. In deciding each economic issue, the arbi-  
31 trator shall accept the final provision relating  
32 to such unresolved issue as contained in the  
33 statement of last best offer of one party or the  
34 other party. In deciding all other questions,  
35 the arbitrator shall accept the final provision  
36 relating to such unresolved issue as contained in  
37 the statement of last best offer of one party or  
38 the other party, except when the arbitrator finds  
39 that a more equitable resolution of the question  
40 may be reached by the arbitrator writing a dif-  
41 ferent provision than either party offered on the  
42 question.

43 Within 10 days after the issuance of the  
44 arbitrator's decision, the parties shall sign an  
45 agreement binding each party to the decision,  
46 unless within that 10-day period the parties both

1 agree to a different agreement and execute that  
2 agreement in the form of a binding contract.  
3 When the final contract differs from the  
4 arbitrator's decision, a copy of the contract  
5 shall be forwarded to the executive director.

6 The arbitration hearing shall be conducted in ac-  
7 cordance with the rules and procedures of the  
8 American Arbitration Association. The hearing  
9 shall be informal, and the rules of evidence pre-  
10 vailing in judicial proceedings shall not be  
11 binding. Any documentary evidence and other data  
12 deemed relevant by the arbitrator may be received  
13 in evidence. The fact-finders' report will be in  
14 all cases the first evidence received by the  
15 arbitrator.

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

25 F. The final decision of the arbitrator or arbi-  
26 trators shall be subject to review by the Supe-  
27 rior Court in the manner specified by section  
28 972.

29 G. In reaching a decision under this paragraph,  
30 the arbitrator shall consider the following fac-  
31 tors:

32 (1) The negotiations between the parties  
33 prior to arbitration;

34 (2) The interests and welfare of the public  
35 and financial ability of the governmental  
36 unit to finance the cost items proposed by  
37 each party to the dispute;

38 (3) Changes in the cost of living;

39 (4) The interests and welfare of the  
40 employee group;

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 nuity 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 governmental unit;

31                   (10) The need to maintain appropriate rela-  
32 tionships between different occupations in  
33 the governmental unit; and

34                   (11) The need to establish fair and reason-  
35 able conditions in relation to job qualifi-  
36 cations and responsibilities.

37                   H. Nothing in this subsection in any way limits  
38 or restricts the right of public employees and  
39 their employers to arbitrate issues that arise  
40 under a contract, that is, so-called grievance  
41 arbitration.

1           Sec. 3. 26 MRSA §1022, sub-§5-A is enacted to  
2 read:

3           5-A. Economic issue. "Economic issue" means an  
4 issue that concerns wages, pensions or insurance.

5           Sec. 4. 26 MRSA §1026, sub-§4, as amended by PL  
6 1977, c. 581, §§12 and 13, is repealed and the fol-  
7 lowing enacted in its place:

8           4. Arbitration.

9           A. A bargaining agent may request arbitration  
10 only when:

11                   (1) A period of 45 days has passed from the  
12 submission of the findings and recommenda-  
13 tions contained in the fact-finders' report,  
14 which 45-day period consists of the 30-day  
15 period referred to in subsection 3, plus 15  
16 more days; and

17                   (2) Either 60 days have passed since the  
18 expiration date of the most recent collec-  
19 tive bargaining agreement for the bargaining  
20 unit, or the bargaining unit has never  
21 previously had a collective bargaining  
22 agreement.

23           B. The bargaining agent shall make the request  
24 for arbitration by notifying the executive direc-  
25 tor and by serving written notice upon the  
26 employer or its representative.

27           C. Upon notice of the bargaining agent's request  
28 for arbitration, the parties shall have 7 days  
29 from receipt of the notice to jointly agree to an  
30 arbitration procedure which shall result in a  
31 binding determination of their controversy; the  
32 agreed-upon plan shall include the number of  
33 arbitrators, the means of selection of the arbi-  
34 trators and the form of arbitration. The  
35 agreed-upon plan shall be filed within the 7-day  
36 period with the executive director.

37           D. When the parties do not agree upon an arbi-  
38 tration procedure as provided for in paragraph C,



1 either party to the dispute may implement the  
2 procedures provided for in this subsection by  
3 notifying the executive director and the other  
4 party to the dispute of the failure to agree.  
5 Upon serving that notice, the serving party shall  
6 request the executive director to submit to each  
7 of the parties identical lists of 7 names of  
8 arbitrators who would be eligible and available  
9 to act as a neutral arbitrator in the existing  
10 controversy. Within 7 days from the date when  
11 both parties are in receipt of the list, they  
12 shall meet for the purpose of selecting an arbi-  
13 trator.

14 At the meeting the parties shall strike names  
15 from the list of 7 names in the following manner.  
16 The parties shall determine which party strikes  
17 the first name by a random technique, such as  
18 flipping a coin, then the party selected shall  
19 strike one name, then each party shall alter-  
20 nately strike one name at a time until 4 names  
21 remain on the list, at which time the party which  
22 is to strike next shall strike 2 names from the  
23 list, the other party will then strike one of the  
24 2 remaining names and the remaining person named  
25 shall be the selected arbitrator.

26 Upon notice of selection, the arbitrator shall  
27 set the time and place for a hearing.

28 The arbitrator shall call the hearing within 14  
29 days of his notice of selection. If the selected  
30 arbitrator can not begin the hearing within the  
31 14-day period, he may ask the executive director  
32 for an extension. The executive director may, at  
33 his discretion, grant the extension which may be  
34 to a time certain or until the arbitrator has  
35 completed other specified duties. The decision  
36 of the executive director to grant or not to  
37 grant an extension is final. At least 7 days  
38 prior to the hearing, the arbitrator shall pro-  
39 vide notice of the time and place of the hearing  
40 to the employer, bargaining agent and executive  
41 director.

42 Not less than 2 days prior to the commencement of  
43 the hearing, each party shall file with the

1           executive director and the arbitrator and deliver  
2           to the other party a proposed collective bargain-  
3           ing agreement, in numbered paragraphs, which that  
4           party is willing to execute and the cost data for  
5           all provisions of the proposed agreement. At the  
6           commencement of the hearing, each party shall  
7           file with the arbitrator a reply setting forth  
8           those paragraphs of the proposed agreement of the  
9           other party which it is willing to accept, and  
10           those paragraphs of the proposed agreement of the  
11           other party which it is unwilling to accept,  
12           together with any alternative contract language  
13           which it would accept in lieu of those paragraphs  
14           which it is unwilling to accept. At any time  
15           prior to the expiration of the 10-day period  
16           after the taking of the testimony, the parties  
17           may jointly file with the arbitrator stipulations  
18           setting forth the agreement provisions which both  
19           parties have agreed to accept. Within 5 days  
20           after the conclusion of taking testimony, the  
21           arbitrator shall forward to each party and to the  
22           executive director an arbitration statement,  
23           setting forth in numbered paragraphs all agree-  
24           ment provisions agreed upon by both parties in  
25           the proposed agreements, the replies and the  
26           stipulations, and stating in numbered paragraphs,  
27           those issues which are resolved. The arbitration  
28           statement shall set forth in numbered paragraphs  
29           all of the unresolved items and identify which of  
30           the unresolved items are economic issues. The  
31           determination of the arbitrator as to the issues  
32           in dispute and as to which issues are economic  
33           shall be conclusive. Within 10 days after the  
34           conclusion of the taking of testimony, each party  
35           shall file with the arbitrator, with a copy to  
36           the opposing party, its statement of last best  
37           offer setting forth, in numbered paragraphs cor-  
38           responding to the statement of unresolved issues  
39           contained in the arbitration statement, the final  
40           agreement proposed by that party. Within 20 days  
41           after the last day for filing the statements of  
42           last best offer, the arbitrator shall issue his  
43           decision on all unresolved issues set forth in  
44           the arbitration statement. A copy of the deci-  
45           sion shall be distributed to each party and to  
46           the executive director. The arbitrator shall  
47           treat each unresolved issue set forth in the

1 arbitration statement as a separate question to  
2 be decided by him. In deciding each economic  
3 issue, the arbitrator shall accept the final  
4 provision relating to such unresolved issue as  
5 contained in the statement of last best offer of  
6 one party or the other party. In deciding all  
7 other questions, the arbitrator shall accept the  
8 final provision relating to such unresolved issue  
9 as contained in the statement of last best offer  
10 of one party or the other party, except when the  
11 arbitrator finds that a more equitable resolution  
12 of the question may be reached by the arbitrator  
13 writing a different provision than either party  
14 offered on the question.

15 Within 10 days after the issuance of the  
16 arbitrator's decision, the parties shall sign an  
17 agreement binding each party to the decision,  
18 unless within that 10-day period the parties both  
19 agree to a different agreement and execute that  
20 agreement in the form of a binding contract.  
21 When the final contract differs from the  
22 arbitrator's decision, a copy of the contract  
23 shall be forwarded to the executive director.

24 The arbitration hearing shall be conducted in ac-  
25 cordance with the rules and procedures of the  
26 American Arbitration Association. The hearing  
27 shall be informal, and the rules of evidence pre-  
28 vailing in judicial proceedings shall not be  
29 binding. Any documentary evidence and other data  
30 deemed relevant by the arbitrator may be received  
31 in evidence. The fact-finders' report will be in  
32 all cases the first evidence received by the  
33 arbitrator.

34 E. The arbitrator or each of the arbitrators, in  
35 those cases where the parties have agreed to a  
36 procedure requiring more than one arbitrator,  
37 shall have the power to administer oaths and to  
38 require by subpoena the attendance and testimony  
39 of witnesses, and the production of books,  
40 records and other evidence relative or pertinent  
41 to the issues presented to them for determina-  
42 tion.

1 F. The final decision of the arbitrator or arbi-  
2 trators shall be subject to review by the Supe-  
3 rior Court in the manner specified by section  
4 1033.

5 G. The right to request and have arbitration be  
6 binding on all issues, as defined and prescribed  
7 in this chapter, extends to all employees covered  
8 by this chapter, except those who are employees  
9 of the State and whose contracts must be approved  
10 or funded by the Legislature. For these employ-  
11 ees, the decision of the arbitrator or arbitra-  
12 tors on economic issues shall be binding or shall  
13 become binding only to the extent that, and in an  
14 identical manner that, economic issues are or  
15 become binding for all other employees of the  
16 State. In all other respects, these employees  
17 have all the rights of and are subject to the  
18 same procedures as all other employees covered by  
19 this chapter.

20 H. In reaching a decision involving university,  
21 academy, vocational-technical institutes or state  
22 schools for practical nursing employees, the  
23 arbitrator or arbitrators shall, regardless of  
24 the arbitration procedure used, consider the fol-  
25 lowing factors:

26 (1) The interests and welfare of the stu-  
27 dents and the public and the financial abil-  
28 ity of the university, academy, vocational-  
29 technical institutes or state schools for  
30 practical nursing to finance the cost items  
31 proposed by each party to the impasse;

32 (2) Comparison of the wages, hours and  
33 working conditions of the employees involved  
34 in the arbitration proceeding with the  
35 wages, hours and working conditions of other  
36 employees performing similar services in  
37 public and private employment competing in  
38 the same labor market;

39 (3) The over-all compensation presently  
40 received by the employees, including direct  
41 salary and wage compensation, vacation,  
42 holidays, life and health insurance, retire-  
43 ment and all other benefits received;

1           (4) Such other factors not confined to this  
2           paragraph, which are normally and  
3           traditionally taken into consideration in  
4           the resolution of disputes involving similar  
5           subjects of collective bargaining in public  
6           higher education;

7           (5) The need of the university, academy,  
8           vocational-technical institutes or state  
9           schools for practical nursing for qualified  
10           employees;

11           (6) Conditions of employment in similar  
12           occupations outside the university, academy,  
13           vocational-technical institutes or state  
14           schools for practical nursing;

15           (7) The need to maintain appropriate rela-  
16           tionships between different occupations in  
17           the university, academy, vocational-technic-  
18           cal institutes or state schools for prac-  
19           tical nursing; and

20           (8) The need to establish fair and reason-  
21           able conditions in relation to job qualifi-  
22           cations and responsibilities.

23           I. Nothing in this subsection in any way limits  
24           or restricts the right of public employees and  
25           their employers to arbitrate issues that arise  
26           under a contract, that is, so-called grievance  
27           arbitration.

28           **Sec. 5. Legislative findings.** The Legislature  
29 finds that while the Municipal Public Employees Labor  
30 Relations Act and the University of Maine Labor Rela-  
31 tions Act have improved employer-employee relation-  
32 ships, in some instances negotiation disputes have  
33 arisen which have left employees without a contract  
34 for extended periods of time. Because public sector  
35 employees are prohibited from striking, and because  
36 protracted labor controversies reduce the quality of  
37 government service and place a shadow over the abil-  
38 ity of the governmental unit to provide for the  
39 health, safety and welfare of its citizens, the  
40 Legislature finds that the best means of promoting  
41 prompt settlement under such conditions is to provide

1 for arbitration that binds both parties on all issues  
2 using the so-called item-by-item last best offer sys-  
3 tem of arbitration.

4 STATEMENT OF FACT

5 When the Legislature gave public employees the  
6 right to organize and bargain collectively, it spe-  
7 cifically denied those same employees the right to  
8 strike. In place of strike as a means of encouraging  
9 dispute resolutions, the law established a 3-stepped  
10 process of dispute resolutions: Mediation, fact  
11 finding and arbitration. Arbitration currently is  
12 not binding on wages, pensions and insurance which  
13 are defined as economic issues in this bill.

14 While Maine's public bargaining laws have gener-  
15 ally worked very well, in some instances the lack of  
16 a more powerful incentive to agree has caused employ-  
17 ees to be without a contract for periods of 2 years  
18 or more. This bill addresses that shortcoming by  
19 making arbitration fully binding on both parties.

20 There are several safeguards built into the bill  
21 to assure that binding arbitration will only be used  
22 as a final resort and not as the standard means of  
23 contract resolution. The bill would authorize arbi-  
24 tration to begin only after fact-finding, followed by  
25 45 days to come to an agreement, and only where the  
26 employees have been working with an expired contract  
27 for a period in excess of 60 days.

28 The means of arbitration on economic questions is  
29 so-called "item-by-item last best offer," the means  
30 that experts on labor law believe causes the greatest  
31 incentive to both parties to come to an agreement and  
32 not resort to arbitration.

33 This bill amends both the Municipal Public  
34 Employees Labor Relations Act and the University of  
35 Maine Labor Relations Act, but does not change the  
36 provisions of the State Employees Labor Relations  
37 Act. Employees covered by the University of Maine  
38 labor relations law who are state employees and whose

1 contracts must be approved or funded by the Legis-  
2 lature do not receive the right to request binding  
3 arbitration.

4 3897051383