

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 331, L.D. 390)  
2 (New Title)

3 FIRST REGULAR SESSION  
4

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5 ONE HUNDRED AND ELEVENTH LEGISLATURE  
6

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7 Legislative Document

No. 1724

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9 H.P. 1299

House of Representatives, June 3, 1983

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

12 Original bill presented by Representative Tuttle of Sanford. Cosponsored  
by Representative Beaulieu of Portland, Representative Gauvreau of Lewiston  
and Senator Hayes of Penobscot.

EDWIN H. PERT, Clerk

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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 Establishing the Emergency  
20 Service Personnel Arbitration Act.  
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22 Be it enacted by the People of the State of Maine as  
23 follows:

24 Sec. 1. 26 MRSa §961, as enacted by PL 1969, c.  
25 424, §1, is amended to read:

26 §961. Purpose

27 It is declared to be the public policy of this  
28 State and it is the purpose of this chapter to pro-  
29 mote the improvement of the relationship between  
30 public employers and their employees by providing a  
31 uniform basis for recognizing the right of public  
32 employees to join labor organizations of their own  
33 choosing and to be represented by such organizations

1 in collective bargaining for terms and conditions of  
2 employment. It is further declared that the protec-  
3 tion of the public health, safety and welfare demands  
4 that emergency service personnel be granted special  
5 means to resolve controversies in a prompt and  
6 orderly fashion, in order to avoid any diminution of  
7 those services and to avoid the concern of the gen-  
8 eral public that those services may suffer diminution  
9 during a protracted controversy between the public  
10 employer and emergency service personnel.

11 Sec. 2. 26 MRSa §962, sub-§2-B is enacted to  
12 read:

13 2-B. Emergency service personnel. "Emergency  
14 service personnel" means public employees employed as  
15 firefighters, law enforcement officers, ambulance and  
16 rescue personnel, or their dispatchers.

17 Sec. 3. 26 MRSa §965, sub-§4, as amended by PL  
18 1975, c. 564, §18, is repealed and the following  
19 enacted in its place:

20 4. Arbitration.

21 A. The provisions of this paragraph shall apply  
22 to emergency service personnel.

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

30 If the parties have not resolved their con-  
31 troversy by the end of that 45-day period,  
32 they may jointly agree to an arbitration  
33 procedure which will result in a binding  
34 determination of their controversy. That  
35 determination will be subject to review by  
36 the Superior Court in the manner specified  
37 in section 972.

38 If they do not jointly agree to such an  
39 arbitration procedure within 10 days after

1 the end of the 45-day period, then either  
2 party may, by written notice to the other  
3 party and the American Arbitration Association,  
4 request that their differences be sub-  
5 mitted to a neutral arbitrator. The neutral  
6 arbitrator will be chosen by the American  
7 Arbitration Association and will not, with-  
8 out the consent of both parties, be the same  
9 person who was selected as mediator pursuant  
10 to subsection 2 nor any member of the fact-  
11 finding board selected pursuant to subsec-  
12 tion 3. When the arbitrator is selected by  
13 the American Arbitration Association, the  
14 arbitration proceedings will be conducted in  
15 accordance with the rules and procedures of  
16 the American Arbitration Association. The  
17 hearing shall be informal, and the rules of  
18 evidence prevailing in judicial proceedings  
19 shall not be binding. Any and all documen-  
20 tary evidence and other data deemed relevant  
21 by the arbitrator may be received in evi-  
22 dence. The arbitrator shall have the power  
23 to administer oaths and to require by sub-  
24 poena the attendance and testimony of wit-  
25 nesses, the production of books, records and  
26 other evidence relative to or pertinent to  
27 the issues represented to them for determi-  
28 nation.

29 (2) In reaching a decision under this para-  
30 graph, the arbitrator shall consider the  
31 following factors:

32 (a) The interests and welfare of the  
33 public and financial ability of the  
34 municipality to finance the cost items  
35 proposed by each party to the impasse;

36 (b) Comparison of the wages, hours and  
37 working conditions, including, but not  
38 limited to, hazards of the job, of the  
39 employees involved in the arbitration  
40 proceeding with the wages, hours and  
41 working conditions of other employees  
42 performing similar services in public  
43 and private employment in other juris-  
44 dictions competing in the same labor  
45 market;

1                   (c) The overall compensation presently  
2                   received by the employees, including  
3                   direct wage compensation, vacation,  
4                   holidays and excused time, insurance  
5                   and pensions, medical and hospitaliza-  
6                   tion benefits, the continuity and  
7                   stability of employment and all other  
8                   benefits received;

9                   (d) Such other factors not confined to  
10                  the foregoing, which are normally and  
11                  traditionally taken into consideration  
12                  in the determination of wages, hours  
13                  and working conditions through volun-  
14                  tary collective bargaining, mediation,  
15                  fact-finding, arbitration or otherwise  
16                  between the parties, in the public ser-  
17                  vice or in private employment, includ-  
18                  ing the average consumer price index;

19                  (e) The need of the municipality for  
20                  qualified employees;

21                  (f) Conditions of employment in simi-  
22                  lar occupations outside the municipal-  
23                  ity;

24                  (g) The need to maintain appropriate  
25                  relationships between different occupa-  
26                  tions in the municipal government; and

27                  (h) The need to establish fair and  
28                  reasonable conditions in relation to  
29                  job qualifications and responsibili-  
30                  ties.

31                  (3) The determination by the arbitrator on  
32                  all issues shall be final and binding on the  
33                  parties.

34                  (4) The arbitrator shall have a period of  
35                  30 days from the termination of the hearing  
36                  in which to submit his report to the parties  
37                  and to the board, unless that time limita-  
38                  tion is extended by the executive director.

1 B. This provision of this paragraph shall apply  
2 to all public employees other than emergency ser-  
3 vice personnel. In addition to the 30-day period  
4 referred to in subsection 3, the parties shall  
5 have 15 more days, making a total period of 45  
6 days from the submission of findings and recom-  
7 mendations, in which to make a good faith effort  
8 to resolve their controversy.

9 If the parties have not resolved their contro-  
10 versy by the end of that 45-day period, they may  
11 jointly agree to an arbitration procedure which  
12 will result in a binding determination of their  
13 controversy. Such determinations will be subject  
14 to review by the Superior Court in the manner  
15 specified by section 972.

16 If they do not jointly agree to such an arbitra-  
17 tion procedure within 10 days after the end of  
18 that 45-day period, then either party may, by  
19 written notice to the other, request that their  
20 differences be submitted to a board of 3 arbitra-  
21 tors. The bargaining agent and the public  
22 employer shall within 5 days of such request each  
23 select and name one arbitrator and shall immedi-  
24 ately thereafter notify each other in writing of  
25 the name and address of the person so selected.  
26 The 2 arbitrators so selected and named shall,  
27 within 10 days from such request, agree upon and  
28 select and name a neutral arbitrator. If either  
29 party shall not select its arbitrator or if the 2  
30 arbitrators shall fail to agree upon, select and  
31 name a neutral arbitrator within that 10 days,  
32 either party may request the American Arbitration  
33 Association to utilize its procedures for the se-  
34 lection of the neutral arbitrator. As soon as  
35 possible after receipt of such request, the neu-  
36 tral arbitrator will be selected in accordance  
37 with rules and procedures prescribed by the Amer-  
38 ican Arbitration Association for making such se-  
39 lection. The neutral arbitrator so selected will  
40 not, without the consent of both parties, be the  
41 same person who was selected as mediator pursuant  
42 to subsection 2 nor any member of the fact-  
43 finding board selected pursuant to subsection 3.  
44 As soon as possible after the selection of the  
45 neutral arbitrator, the 3 arbitrators or if

1 either party shall not have selected its arbitra-  
2 tor, the 2 arbitrators, as the case may be, shall  
3 meet with the parties or their representatives,  
4 or both, forthwith, either jointly or separately,  
5 make inquiries and investigations, hold hearings,  
6 or take such other steps as they deem appropri-  
7 ate. If the neutral arbitrator is selected by  
8 utilizing the procedures of the American Arbitra-  
9 tion Association, the arbitration proceedings  
10 will be conducted in accordance with the rules  
11 and procedures of the American Arbitration Asso-  
12 ciation. The hearing shall be informal, and the  
13 rules of evidence prevailing in judicial proceed-  
14 ings shall not be binding. Any and all documen-  
15 tary evidence and other data deemed relevant by  
16 the arbitrators may be received in evidence. The  
17 arbitrators shall have the power to administer  
18 oaths and to require by subpoena the attendance  
19 and testimony of witnesses, the production of  
20 books, records and other evidence relative or  
21 pertinent to the issues represented to them for  
22 determination.

23 If the controversy is not resolved by the parties  
24 themselves, the arbitrators shall proceed as fol-  
25 lows: With respect to a controversy over sal-  
26 aries, pensions and insurance, the arbitrators  
27 will recommend terms of settlement and may make  
28 findings of fact; such recommendations and find-  
29 ings will be advisory only and will be made, if  
30 reasonably possible, within 30 days after the se-  
31 lection of the neutral arbitrator; the arbitra-  
32 tors may in their discretion, make such recom-  
33 mendations and findings public, and either party  
34 may make such recommendations and findings public  
35 if agreement is not reached with respect to such  
36 findings and recommendations within 10 days after  
37 their receipt from the arbitrators; with respect  
38 to a controversy over subjects other than sal-  
39 aries, pensions and insurance, the arbitrators  
40 shall make determinations with respect thereto if  
41 reasonably possible within 30 days after the se-  
42 lection of the neutral arbitrator; such determi-  
43 nations may be made public by the arbitrators or  
44 either party; and if made by a majority of the  
45 arbitrators, such determinations will be binding  
46 on both parties and the parties will enter an

1        agreement or take whatever other action that may  
2        be appropriate to carry out and effectuate such  
3        binding determinations; and such determinations  
4        will be subject to review by the Superior Court  
5        in the manner specified by section 972. The  
6        results of all arbitration proceedings, recom-  
7        mendations and awards conducted under this  
8        section shall be filed with the Maine Labor Rela-  
9        tions Board at the offices of its executive  
10        director simultaneously with the submission of  
11        the recommendations and award to the parties. In  
12        the event the parties settle their dispute during  
13        the arbitration proceeding, the arbitrator or the  
14        chairman of the arbitration panel will submit a  
15        report of his activities to the Executive Direc-  
16        tor of the Maine Labor Relations Board not more  
17        than 5 days after the arbitration proceeding has  
18        terminated.

19        **Sec. 4. Legislative findings.** The Legislature  
20        finds that while the municipal public employees labor  
21        relations laws have improved the relationship between  
22        public employers and their employees, in some  
23        instances impasses in their negotiations have left  
24        employees without a contract for more than a year.  
25        Because these circumstances defeat the purpose of the  
26        Act, may reduce the quality of government service and  
27        place a shadow over the ability of the governmental  
28        unit to protect the safety and welfare of its citi-  
29        zens, and because these controversies pose unique  
30        concerns which require special procedures to assure  
31        amiable and orderly settlement in order to avoid the  
32        loss of public confidence in the municipality's abil-  
33        ity to deliver emergency services, the Legislature  
34        finds that binding arbitration on all issues is the  
35        best means of settling these controversies.

#### 36    STATEMENT OF FACT

37        Under current law, there is one arbitration  
38        procedure in Title 26, section 965 that applies to  
39        all municipal public employees. While much of this  
40        procedure is applied to emergency service personnel  
41        in this new draft, certain changes are made to better  
42        fit the circumstances of firefighters, law enforce-  
43        ment officers, ambulance and rescue personnel and



1 their dispatchers. If the parties do not resolve  
2 their controversy and do not agree on an arbitration  
3 procedure, this new draft provides for one neutral  
4 arbitrator chosen by the American Arbitration Associ-  
5 ation, rather than a 3-member board of arbitrators.  
6 This arbitrator shall reach his decision based on  
7 several factors similar to those in the state employ-  
8 ees labor relations laws, and his determination shall  
9 be final and binding on all issues rather than only  
10 on noneconomic issues.

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