

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2100

6
7 H.P. 1590

House of Representatives, February 21, 1984

8 Approved for introduction by the Legislative Council pursuant to Joint Rule 26.

9 Referred to the Committee on Labor. Sent up for concurrence and ordered printed.
10

EDWIN H. PERT, Clerk

Presented by Representative Gauvreau of Lewiston.

Cosponsor: Senator Carpenter of Aroostook.
11

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Improve the Functioning of the
18 Neutral Processes in Maine's Labor Relations
19 Laws.
20

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

23 Sec. 1. 26 MRSA §965, sub-§3, ¶B, as repealed
24 and replaced by PL 1975, c. 564, §17, is amended to
25 read:

26 B. If the parties do not jointly agree to call
27 upon the Maine Labor Relations Board or to pursue
28 some other procedure, either party to the contro-
29 versy may request the executive director to as-
30 sign a fact-finding panel. If so requested, the
31 executive director shall cause a 3-member fact-
32 finding panel to be appointed in the following
33 manner: The executive director shall require the
34 bargaining agent and public employer to each se-
35 lect a fact finder and then cause a neutral

1 chairman to be selected by submitting an identical
2 list of 7 names to the bargaining agent and
3 to the public employer. The bargaining agent and
4 the public employer shall then meet within 7 days
5 and select a name from the list as neutral chair-
6 man, such selection to be made in accordance with
7 the rules and procedures of the American Arbitra-
8 tion Association, the bargaining agent and the
9 public employer shall then communicate their
10 choice of neutral to the executive director, in
11 selecting 7 names the executive director shall
12 choose appoint a fact-finding panel, ordinarily
13 of 3 members, in accordance with rules and proce-
14 dures prescribed by the board for making such ap-
15 pointment. The fact-finding panel shall be
16 appointed from a list maintained by the board and
17 drawn up after consultation with representatives
18 of state and local government administrators,
19 agencies with industrial relations and personnel
20 functions and representatives of employee organi-
21 zations and of employers. Any person who has ac-
22 tively participated as the mediator in the imme-
23 diate proceedings for which fact-finding has been
24 called shall not sit on that fact-finding panel.
25 The panel shall hear the contending parties to
26 the controversy. It may request statistical data
27 and reports on its own initiative in addition to
28 the data regularly maintained by the Bureau of
29 Labor and Industry, and shall have the power to
30 administer oaths and to require by subpoena the
31 attendance and testimony of witnesses, the pro-
32 duction of books, records and other evidence re-
33 lative or pertinent to the issues represented to
34 them. The members of the fact-finding panel shall
35 submit their findings and recommendations only to
36 the parties and to the Executive Director of the
37 Maine Labor Relations Board.

38 Sec. 2. 26 MRSA §965, sub-§7 is enacted to read:

39 7. Standards. In reaching a decision under this
40 paragraph, the arbitrator shall consider the follow-
41 ing factors:

42 A. The negotiations between the parties prior to
43 arbitration;

- 1 B. The interests and welfare of the public and
2 financial ability of the governmental unit to fi-
3 nance the cost items proposed by each party to
4 the dispute;
- 5 C. Changes in the cost of living;
- 6 D. The interests and welfare of the employee
7 group;
- 8 E. Comparison of the wages, hours and working
9 conditions, including, but not limited to, haz-
10 ards of the job, of the employees involved in the
11 arbitration proceeding with the wages, hours and
12 working conditions of other employees performing
13 similar services in public and private employment
14 in other jurisdictions competing in the same la-
15 bor market;
- 16 F. The overall compensation presently received
17 by the employees, including direct wage compensa-
18 tion, vacation, holidays and excused time, insur-
19 ance and pensions, medical and hospitalization
20 benefits, the continuity and stability of employ-
21 ment and all other benefits needed;
- 22 G. The other factors not confined to the forego-
23 ing which are normally and traditionally taken
24 into consideration in the determination of wages,
25 hours and working conditions through voluntary
26 collective bargaining, mediation, fact finding,
27 arbitration or otherwise between the parties, in
28 the public service or in private employment, in-
29 cluding wage and price statistics compiled by the
30 State Government or Federal Government;
- 31 H. The need of the public employer for qualified
32 employees;
- 33 I. Conditions of employment in similar occupa-
34 tions outside the governmental unit;
- 35 J. The need to maintain appropriate relation-
36 ships between different occupants in the govern-
37 mental unit; and

1 K. The need to establish fair and reasonable
2 conditions in relation to job qualifications and
3 responsibilities.

4 Sec. 3. 26 MRSA §968, sub-§5, ¶F, as amended by
5 PL 1977, c. 479, §7, is further amended to read:

6 F. Either party may seek a review by the Superi-
7 or Court of Kennebec County or of the county in
8 which the prohibited practice is alleged to have
9 occurred of a decision of the Maine Labor Rela-
10 tions Board by filing a complaint in accordance
11 with the Rules of Civil Procedure, Rule 80B, pro-
12 vided the complaint shall be filed within 15 days
13 of the effective date of the decision. Upon the
14 filing of the complaint, the court shall set the
15 complaint down for hearing at the earliest possi-
16 ble time and shall cause all interested parties
17 and the board to be notified. Pending review and
18 upon application of any party in interest, the
19 court may grant such temporary relief or re-
20 straining order and may impose such terms and
21 conditions as it deems just and proper; provided
22 that the board's decision shall not be stayed ex-
23 cept where it is clearly shown to the satisfac-
24 tion of the court that substantial and irrepara-
25 ble injury shall be sustained or that there is a
26 substantial risk of danger to the public health
27 or safety. The executive director shall forthwith
28 file in the court the record in the proceeding
29 certified by the executive director or a member
30 of the board. The record shall include all docu-
31 ments filed in the proceeding and the transcript,
32 if any. After hearing, which shall be held not
33 less than 7 days after notice thereof, the court
34 may enforce, modify, enforce as so modified or
35 set aside in whole or in part the decision of the
36 board, except that the findings of the board on
37 questions of fact shall be final unless shown to
38 be clearly erroneous. Any appeal to the law
39 court shall be the same as an appeal from an in-
40 terlocutory order under section 6. When the ap-
41 peal from the board is based entirely on issues
42 of law and does not challenge findings of fact
43 made by the board, either party may appeal di-
44 rectly to the law court, in such a case the pro-
45 visions of this subsection shall be complied with

1 to the extent those provisions are consistent
2 with the roles adopted by the Maine Supreme Fed-
3 eral Court.

4 Sec. 4. 26 MRSA §979-D, sub-§3, ¶B, as amended
5 by PL 1975, c. 564, §34, is further amended to read:

6 B. If the parties do not jointly agree to call
7 upon the Maine Labor Relations Board or to pursue
8 some other procedure, either party to the contro-
9 versy may request the executive director to as-
10 sign a fact-finding panel. If so requested, the
11 executive director shall appoint a fact-finding
12 panel, ordinarily of 3 members, in accordance
13 with rules and procedures prescribed by the board
14 for making such appointments as provided in sec-
15 tion 965, subsection 3.

16 STATEMENT OF FACT

17 The purpose of this bill is to correct flaws in
18 Maine labor relations laws.

19 The bill sets standards for the arbitrators in
20 cases arising under the municipal law just as the
21 state and university laws currently have set. This
22 is to assure that arbitrators have clear delegation
23 from the Legislature and that their decisions are not
24 subject to challenge on the basis of the lack there-
25 of.

26 The bill also set standards for neutral fact
27 finders to be set by the board.

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