

MAINE STATE LEGISLATURE

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1 (After Deadline)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1377

8 H.P. 957

House of Representatives, April 24, 1985

9 Approved for introduction by a majority of the Legislative Council
10 pursuant to Joint Rule 27.

Reference to the Committee on Labor suggested and ordered printed.

11 EDWIN H. PERT, Clerk

Presented by Representative Beaulieu of Portland.

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT to Amend the Procedures of the State
19 Board of Arbitration and Conciliation.
20

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

23 Sec. 1. 26 MRSA c. 9, sub-c. II, as amended, is
24 repealed.

25 Sec. 2. 26 MRSA c. 9, sub-c. II-A is enacted to
26 read:

27 SUBCHAPTER II-A

28 STATE BOARD OF ARBITRATION AND CONCILIATION

29 §931. Appointment and qualification; salaries and
30 expenses; rules; reports

31 The State Board of Arbitration and Conciliation,
32 in this subchapter called the "board," shall consist

1 of 3 members appointed by the Governor, from time to
2 time upon the expiration of the terms of the several
3 members, for terms of 3 years. One member shall be
4 an employer of labor or selected from some associa-
5 tion representing employers of labor, and another
6 shall be an employee or an employee selected from
7 some bona fide trade or labor union. The 3rd member
8 shall be chairman of the board and shall represent
9 the public interests of the State. Vacancies occur-
10 ring during a term shall be filled for the unexpired
11 term. Members of the board shall each receive \$50 a
12 day for their services for the time actually employed
13 in the discharge of their official duties. They
14 shall receive their traveling and all other necessary
15 expenses. The costs for services rendered and ex-
16 penses incurred by the State Board of Arbitration and
17 Conciliation shall be paid by the State from an ap-
18 propriation for the board which shall be included in
19 the budget of the Maine Labor Relations Board. Au-
20 thorization for services rendered and expenditures
21 incurred by the State Board of Arbitration and Con-
22 ciliation shall be the responsibility of the Execu-
23 tive Director of the Maine Labor Relations Board who
24 shall, annually, on or before July 1st, make a report
25 of the activities of the State Board of Arbitration
26 and Conciliation to the Governor. The board shall
27 from time to time make rules of procedure as it deems
28 necessary.

29 Six alternate members, having the same qualifica-
30 tions as members, and 2 being from each category,
31 shall be appointed in the same manner and for the
32 same terms as members and shall, when serving as mem-
33 bers of the board, have the same responsibilities and
34 duties and be entitled to the same privileges and
35 emoluments as members.

36 When, for any reason, a member of the board does
37 not serve in any particular case, the alternate mem-
38 ber having the same qualifications shall act as a
39 member of the board in that case.

40 The board's responsibility is to further harmoni-
41 ous labor-management relations in this State. It may
42 serve as a board of inquiry or as a board of concili-
43 ation in the private sector, or as a board of arbi-
44 tration in either the public or private sector, pro-

1 vided that the parties appearing before it so agree.
2 No member of the board may participate in any case in
3 which he has a personal interest.

4 Workers shall have full freedom of association,
5 self organization and designation of representatives
6 of their own choosing, for the purpose of negotiating
7 the terms and conditions of their employment or other
8 mutual aid or protection, free from interference, re-
9 straint or coercion by their employers or other per-
10 sons. It shall be the duty of the board to endeavor
11 to settle disputes, strikes and lockouts between em-
12 ployers and employees.

13 An employer shall not retaliate against any em-
14 ployee who may have petitioned or sought the assist-
15 ance of the board pursuant to this subchapter or for
16 having provided information or testimony in this sub-
17 chapter.

18 §932. Subpoena powers

19 The chairman of the board or his alternate may
20 administer oaths and require by subpoena the attend-
21 ance and testimony of witnesses, the production of
22 books, records and other evidence relative or perti-
23 nent to the matter before it.

24 Witnesses subpoenaed by the board shall be al-
25 lowed the same fees as are paid to witnesses in Supe-
26 rior Court. These fees, together with all necessary
27 expenses of the board, shall be paid by the Treasurer
28 of State on warrants drawn by the State Controller.

29 §933. Notice; recess of meetings and hearings

30 Except in cases in which the public welfare is
31 involved, a minimum of 3 working days' notice shall
32 be required before the board will convene.

33 When the board has taken jurisdiction of a case
34 where a dispute exists, it may, at its discretion,
35 recess the hearings for any reasonable purpose and
36 may call a subsequent meeting as soon as practicable
37 at any appropriate place or time which it may desig-
38 minate for a continuation of the proceedings.

1 §934. Conciliation; notification of dispute; pro-
2 ceedings in settlement; report

3 Whenever it appears to the employer or employees
4 concerned in a labor dispute, or when a strike or
5 lockout is threatened, or actually occurs, he or they
6 may request the services of the board.

7 If, when the request or notification is received,
8 it appears that a substantial number of employees in
9 the department, section or division of the business
10 of the employer are involved, the board shall endeavor,
11 by conciliation, to obtain an amicable settle-
12 ment. If the board is unable to obtain an amicable
13 settlement it shall endeavor to persuade the employer
14 and employees to submit the matter to arbitration.

15 The board shall, upon notification, as soon as
16 practicable, visit the place where the controversy
17 exists or arrange a meeting of the interested parties
18 at a convenient place, and shall make careful inquiry
19 into the cause of the dispute or controversy, and the
20 board may, with the consent of the Governor, conduct
21 the inquiry beyond the limits of the State.

22 The board shall hear all interested persons who
23 come before it, advise the respective parties what
24 ought to be done by either or both to adjust the con-
25 troversy, and shall make a confidential written re-
26 port to the Governor and the Executive Director of
27 the Maine Labor Relations Board. The Governor or ex-
28 ecutive director may make the report public if, after
29 15 days from the date of its receipt, the parties
30 have not resolved the controversy and the public in-
31 terest would be served by publication. In addition,
32 either the governor or the executive director may re-
33 fer the report and recommendations of the board to
34 the Attorney General or other department for appro-
35 priate action when it appears that any of the laws of
36 this State may have been violated.

37 §935. Application for board of inquiry; notice of
38 hearing

39 In cases of controversy, where conciliation, me-
40 diation or arbitration is refused by one of the par-
41 ties or the board has deemed that those processes

1 have been or will be ineffective, either party may
2 request the board to make inquiry. The application
3 for inquiry may be signed by the employer or by a
4 substantial number of the employees in the depart-
5 ment, section or division of the business in which
6 the controversy exists or by their agent or represen-
7 tative or by both parties and, if signed by an agent
8 or representative claiming to represent the employ-
9 ees, the board shall satisfy itself that he is duly
10 authorized to do so.

11 Upon receipt of the application for inquiry, the
12 chairman, or in his absence or disability the alter-
13 nate chairman, through the auspices of the Maine La-
14 bor Relations Board, shall give notice of the time
15 and place of hearing and may, at the board's discre-
16 tion, give public notice by publishing in at least
17 one newspaper the time and place of the hearing.

18 The board shall, upon the request of the Governor
19 or the mayor of a city or the selectman of a town,
20 investigate and report upon any labor controversy if,
21 in its opinion, it threatens the public welfare.

22 The board, after inquiry, may make and publish a
23 report in the matter, including its findings of fact
24 and recommendations for settling the controversy.

25 §936. Submission to arbitration; decision

26 If the case cannot be settled through the process
27 of conciliation, the interested parties may jointly
28 submit the case to arbitration by filing an arbitra-
29 tion application with the Executive Director of the
30 Maine Labor Relations Board.

31 The chairman of the board shall immediately, af-
32 ter the filing, give notice of the time and place of
33 the hearing to both parties.

34 §937. Procedure in arbitration

35 The board may hear grievance arbitration matters
36 referred to it pursuant to a collective bargaining
37 agreement. It may hear any labor dispute jointly re-
38 ferred to it for resolution by arbitration by the
39 representatives of management and labor. In cases of

1 arbitration, the parties concerned must submit in
2 writing to the board, the matters which they mutually
3 agree to submit to arbitration and such other details
4 pertinent to the issues involved as they may agree
5 upon. When the matter is submitted to arbitration by
6 the board, the board shall investigate the matter in
7 controversy, shall hear all interested persons who
8 come before it and make an award and written opinion
9 which shall be published by the chairman of the board
10 and shall be binding on the parties who join in the
11 agreement.

12 The board may, at any time in the arbitration
13 process, seek a stipulated settlement of the matter
14 submitted to it for resolution provided that settle-
15 ment is approved by the parties to the dispute. Ex-
16 cept as provided in section 972, arbitration proceed-
17 ings shall be subject to the review provisions of the
18 Uniform Arbitration Act, Title 14, chapter 706.

19 §938. Advertising or soliciting for workers during
20 strike or disturbance; exceptions; penalty

21 If any employer, during the continuance of a
22 strike among his employees, or during the continuance
23 of a lockout or other labor trouble among his employ-
24 ees, publicly advertises in newspapers, or by posters
25 or otherwise, for employees, or by himself or his
26 agents solicits persons to work for him to fill the
27 places of strikers, he shall plainly and explicitly
28 mention in the advertisements or oral or written
29 solicitations that a strike, lockout or other labor
30 disturbance exists. If any employee, during the con-
31 tinuance of a strike, lockout or other labor trouble
32 advertises for or solicits business for a competitor
33 of the employers engaged in the labor dispute, he
34 shall plainly and explicitly mention in the adver-
35 tisement or oral or written solicitations that a
36 strike, lockout or other labor disturbance exists.
37 This section shall cease to be operative if the board
38 determines that the business of the employer, in re-
39 spect to which the strike or other labor trouble oc-
40 curring, is being carried on in the normal and usual
41 manner and to the normal and usual extent. The board
42 shall determine this question as soon as possible,
43 upon the application of the employer. Any person,
44 firm, association or corporation who violates this

1 section shall be punished by a fine not less that
2 \$250 nor more than \$500.

3 §939. Proceedings confidential

4 Any information disclosed by either party to a
5 dispute to the board or any of its members in carry-
6 ing out this subchapter shall be confidential, except
7 as may be provided otherwise in this subchapter.

8 STATEMENT OF FACT

9 The basic purposes of this bill are to
10 procedurally restructure the current law governing
11 the State Board of Arbitration and Conciliation,
12 since many procedural provisions are now randomly lo-
13 cated, and to more clearly define the basic functions
14 of the board. As now written and organized, proce-
15 dural and policy provisions are located in awkward
16 places, there is redundancy and some provisions are
17 archaic and of little use in current labor relations.
18 The bill attempts to organize the procedural provi-
19 sions in the current law in a more orderly way and to
20 otherwise express the substantive provisions in a way
21 more understandable to today's practice.

22 In this vein, the bill seeks to accomplish the
23 following.

24 1. The bill takes enabling and structural provi-
25 sions from existing law in the Maine Revised Stat-
26 utes, Title 26, section 911, and joins them in a sin-
27 gle section with certain provisions found in existing
28 Maine Revised Statutes, Title 26, sections 912 and
29 915. It also makes it clear that the board may pro-
30 vide grievance arbitration services in the public
31 sector, a service which has constituted the principal
32 business of the board for many years.

33 2. In the existing law, there are 2 provisions
34 dealing with the supoena and summons power of the
35 board. This bill consolidates that authority into
36 one provision.

37 3. In the Maine Revised Statutes, the new Title
38 26, section 933, merely restates notice and hearing

1 provisions contained in different sections of the exist-
2 ing law.

3 4. In the Maine Revised Statutes, the new Title
4 26, section 934, consolidates and amends the concilia-
5 tion provisions contained in the existing law. It
6 abolishes any reference to local boards of arbitra-
7 tion, since the provision in the existing law has not
8 been utilized in many years and the provision is ar-
9 chaic. It also deletes the requirement in the exist-
10 ing law that a minimum of 10 employees be involved to
11 invoke the conciliation efforts of the board and sub-
12 stitutes the same language found in the Board of In-
13 quiry provision to the effect that a "substantial
14 number" of employees must be involved. Since the
15 board has no authority to issue binding orders except
16 when the parties voluntarily submit to arbitration,
17 there appears to be no sound reason why its concilia-
18 tion activity should be limited to employers of 10 or
19 more.

20 5. In the Maine Revised Statutes, the new Title
21 26, section 935, merely incorporates the Board of In-
22 quiry provision found in the existing law.

23 6. In the Maine Revised Statutes, the new Title
24 26, section 936, substantially incorporates the pro-
25 vision found in the Maine Revised Statutes, Title 26,
26 section 918, of the existing law and also makes it
27 clear that a request for arbitration must be a mutual
28 request.

29 7. This bill incorporates in the procedure in
30 arbitration provisions some of the provisions found
31 in the Maine Revised Statutes, Title 26, section 919,
32 of the existing law; it also eliminates some archaic
33 language which placed a time limit on the effective-
34 ness of an arbitration award and required the board
35 to issue a decision within 3 weeks. It adds language
36 which brings the procedure into accord with modern
37 arbitration practice, makes it clear that the board
38 may hear typical grievance arbitration which forms
39 the principal part of its activity and makes it clear
40 that grievance arbitration is subject to the Uniform
41 Arbitration Act as declared by the Supreme Judicial
42 Court.

1 8. The bill restates in total the provision gov-
2 erning recruitment of replacements for strikers now
3 found in the Maine Revised Statutes, Title 26, sec-
4 tion 921, of the existing law.

5 9. The Maine Revised Statutes, the new Title 26,
6 section 939, retains the confidentiality provision
7 found in the existing law revised to reflect the con-
8 tents of this bill rather than the existing law.

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