

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1312

S.P. 432

In Senate, April 21, 1987

Reference to the Committee on Labor suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator TUTTLE of York.

Cosponsored by Representative MCHENRY of Madawaska,
Senator ANDREWS of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT Providing Collective Bargaining Rights
2 to Legislative Employees.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 Sec. 1. 26 MRSA §979, as enacted by PL 1973, c.
7 774, is amended to read:

8 §979. Purpose

9 It is declared to be the public policy of this
10 State and it is the purpose of this chapter to pro-
11 mote the improvement of the relationship between the
12 State of Maine and its employees and between the Leg-
13 islature and its employees by providing a uniform ba-
14 sis for recognizing the right of state employees to
15 join labor organizations of their own choosing and to

1 be represented by such organizations in collective
2 bargaining for terms and conditions of employment.

3 Sec. 2. 26 MRSA §979-A, sub-§4-A is enacted to
4 read:

5 4-A. Legislative employee. "Legislative employ-
6 ee" means any employee of the Legislature performing
7 services within the legislative branch, except any
8 person:

9 A. Elected by popular vote;

10 B. Appointed to office pursuant to law by the
11 Governor or the Legislature for a specified term;

12 C. Whose duties as deputy, administrative as-
13 stant or secretary necessarily imply a confi-
14 dential relationship with respect to matter sub-
15 ject to collective bargaining, as between that
16 person and the Legislative Council;

17 D. Who is a temporary, on-call employee; or

18 E. Who has been employed less than 30 days.

19 Sec. 3. 26 MRSA §979-A, sub-§5, as amended by PL
20 1985, c. 785, Pt. A, §98, is further amended to read:

21 5. Public employer. "Public employer" means all
22 the departments, agencies and commissions of the ex-
23 ecutive branch of the State of Maine, represented by
24 the Governor, or his designee, or the legislative
25 branch, represented by the Legislative Council or its
26 designee. In the furtherance of this chapter, the
27 State and the Legislature shall be considered, re-
28 spectively, as a single employer employers and em-
29 ployment relations, policies and practices throughout
30 the state service shall be as consistent as practica-
31 ble. ¶ In the case of state employees, it is the re-
32 sponsibility of the executive branch to negotiate
33 collective bargaining agreements and to administer
34 such agreements. In the case of legislative employ-
35 ees, it is the responsibility of the legislative
36 branch to negotiate collective bargaining agreements
37 and to administer those agreements. To coordinate
38 the employer position in the negotiation of agree-

1 ments in regard to state employees, the Legislative
2 Council or its designee shall maintain close liaison
3 with the Governor or his designee representing the
4 executive branch relative to the negotiation of cost
5 items in any proposed agreement. The Governor is re-
6 sponsible for the employer functions of the executive
7 branch under this chapter, and shall coordinate its
8 collective bargaining activities with operating agen-
9 cies on matters of agency concern. The Legislative
10 Council, or its designee, is responsible for the em-
11 ployer functions of the legislative branch under this
12 chapter. It is the responsibility of the legislative
13 branch Legislature to act upon those portions of ten-
14 tative agreements negotiated by the executive branch
15 or the Legislative Council which require legislative
16 action.

17 The Bureau of Employee Relations, through the Commis-
18 sioner of Administration, shall act as directed by
19 the Governor to:

20 A. Develop and execute employee relations' poli-
21 cies, objectives and strategies consistent with
22 the overall objectives of the Governor;

23 B. Conduct negotiations with certified and rec-
24 ognized bargaining agents under applicable stat-
25 utes;

26 C. Administer and interpret collective bargain-
27 ing agreements, and coordinate and direct agency
28 activities as necessary to promote consistent po-
29 licies and practices;

30 D. Represent the State in all bargaining unit
31 determinations, elections, prohibited practice
32 complaints and any other proceedings growing out
33 of employee relations and collective bargaining
34 activities;

35 E. Coordinate the compilation of all data and
36 information needed for the development and evalu-
37 ation of employee relations' programs and in the
38 conduct of negotiations;

39 F. Coordinate the state's resources as needed to
40 represent the State in negotiations, mediation,

1 fact finding, arbitration and other proceedings;
2 and

3 G. Provide staff advice on employee relations to
4 the various departments and agencies of State
5 Government, including providing for necessary su-
6 pervisory and managerial training.

7 All state departments and agencies shall provide such
8 assistance, services and information as required by
9 the Governor's office, or the Bureau of Employee Re-
10 lations, and shall take such administrative or other
11 action as may be necessary to implement and adminis-
12 ter the provisions of any binding agreement between
13 the State and employee organizations entered into un-
14 der law.

15 Sec. 4. 26 MRSA §979-B, as enacted by PL 1973,
16 c. 774, is amended to read:

17 §979-B. Right of state employees or legislative em-
18 ployees to join labor organizations

19 No one shall may directly or indirectly interfere
20 with, intimidate, restrain, coerce or discriminate
21 against state or legislative employees or a group of
22 state employees in the free exercise of their rights,
23 hereby given, voluntarily to join, form and partici-
24 pate in the activities of organizations of their own
25 choosing for the purposes of representation and col-
26 lective bargaining, or in the free exercise of any
27 other right under this chapter.

28 Sec. 5. 26 MRSA §979-C, sub-§2, as enacted by PL
29 1973, c. 774, is amended to read:

30 2. State and legislative employee prohibitions.
31 State and legislative employees, State employee orga-
32 nizations, their agents, members and bargaining
33 agents are prohibited from:

34 A. Interfering with, restraining or coercing em-
35 ployees in the exercise of the rights guaranteed
36 in section 979-B or the public employer in the
37 selection of its representative for purposes of
38 collective bargaining or the adjustment of griev-
39 ances;

1 B. Refusing to bargain collectively with the
2 public employer as required by section 979-D; or

3 C. Engaging in:

4 (1) A work stoppage;

5 (2) A slowdown;

6 (3) A strike; or

7 (4) The blacklisting of the public employer
8 for the purpose of preventing it from fill-
9 ing employee vacancies.

10 Sec. 6. 26 MRSA §979-D, sub-§1, ¶E, as amended
11 by PL 1985, c. 785, Pt. B, §117, is further amended
12 to read:

13 E. To confer and negotiate in good faith:

14 (1) To confer and negotiate in good faith
15 with respect to wages, hours, working condi-
16 tions and contract grievance arbitration,
17 except that by such obligation neither party
18 shall be compelled to agree to a proposal or
19 be required to make a concession. All mat-
20 ters relating to the relationship between
21 the employer and employees shall be the sub-
22 ject of collective bargaining, except those
23 matters which are prescribed or controlled
24 by public law. Such matters appropriate for
25 collective bargaining to the extent they are
26 not prescribed or controlled by public law
27 include but are not limited to:

28 (a) Wage and salary schedules to the
29 extent they are inconsistent with rates
30 prevailing in commerce and industry for
31 comparable work within the State;

32 (b) Work schedules relating to as-
33 signed hours and days of the week;

34 (c) Use of vacation or sick leave, or
35 both;

- 1 (d) General working conditions;
- 2 (e) Overtime practices;
- 3 (f) Rules for personnel administra-
4 tion, except the following: Rules re-
5 lating to applicants for employment in
6 state or legislative service and state
7 classified employees in an initial pro-
8 bationary status, including any exten-
9 sions thereof, provided such rules are
10 not discriminatory by reason of an ap-
11 plicant's race, color, creed, sex or
12 national origin;
- 13 (g) Compensation system for state and
14 legislative employees, which is defined
15 as:
- 16 (i) Guide charts, if any, and job
17 evaluation factors, including fac-
18 tor language and factor weights,
19 used to evaluate jobs for pay pur-
20 poses;
- 21 (ii) Job point to pay grade con-
22 version tables;
- 23 (iii) The number of and spread
24 between pay steps within pay
25 grades;
- 26 (iv) The number of and spread be-
27 tween pay grades within the sys-
28 tem; and
- 29 (v) Temporary payment of recruit-
30 ment and retention stipends, pro-
31 vided the stipends are allowed un-
32 der Civil Service Law;
- 33 (h) The nature of and procedures gov-
34 erning appeals of the allocation or re-
35 allocation of job classifications to
36 pay grades resulting from any revisions
37 to the compensation system; and

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(i) Implementation of any revisions to the compensation system.

(2) Subparagraph (1), shall not be construed to be in derogation of or contravene the spirit and intent of the merit system principles and personnel laws.

(3) Cost items shall be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, all cost items submitted shall be returned to the parties for further bargaining.

(4) Collective bargaining over the subjects described in subparagraph (1), divisions (g), (h) and (i), is subject to the following.

(a) Subparagraph (1), division (g), shall not be construed to authorize any more than one system for evaluating jobs of state employees in bargaining units recognized under this chapter.

(b) Either the public employer or the bargaining agents may compel the other party to bargain collectively over the subjects described in subparagraph (1), divisions (g), (h) and (i), provided that bargaining over those subjects may not be compelled by either the public employer or the bargaining agents sooner than 10 years after the parties' last agreement to revise the compensation system made pursuant to a demand to bargain.

(c) During the periods of time described in division (b), when the subjects described in subparagraph (1), divisions (g), (h) and (i), are not mandatory subjects of bargaining, they shall be permissive subjects of bargaining.

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(d) Bargaining over the subjects described in subparagraph (l), divisions (g), (h) and (i), shall be conducted separately and apart from bargaining with individual bargaining agents over all other negotiable subjects and shall be conducted within a committee composed of representatives of management and of the bargaining units recognized under this chapter.

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(e) The labor representatives on the committee shall consist of equal numbers of representatives from each of the bargaining units recognized under this chapter. Each bargaining unit shall have one vote, regardless of the number of representatives, on any matter addressed by the committee. The labor position on any matter addressed by the committee shall be established by majority vote of the units recognized under this chapter. A majority vote of the units is necessary to initiate bargaining over the matters described in subparagraph (l), divisions (g), (h) and (i).

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(f) Notwithstanding the time frame provided in subparagraph (3), cost items resulting from revisions to the compensation system may only be submitted to the Legislature for funding after all appeals from the allocation or reallocation of job classifications under the revised system have been finally decided. The cost items relating to an individual bargaining unit shall be submitted to the Legislature for funding as part of the next legislation submitted pursuant to subparagraph (3) to fund a collective bargaining agreement between the State and that bargaining unit.

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(g) Bargaining over the subjects described in subparagraph (l), divisions

1 (g), (h) and (i), shall be subject to
2 the dispute resolution procedures of
3 subsections 2, 3 and 4. For purposes
4 of subsection 4, paragraph D, contro-
5 versies over the subjects described in
6 subparagraph (l), divisions (g), (h)
7 and (i), shall be deemed "controversies
8 over salaries."

9 (5) Nothing in this chapter may be con-
10 strued to exclude from the scope of collec-
11 tive bargaining the subjects described in
12 subparagraph (l), divisions (g), (h) and
13 (i).

14 **Sec. 7. 26 MRSA §979-D, sub-§4, ¶C, as enacted**
15 **by PL 1973, c. 774, is amended to read:**

16 C. In reaching a decision under this paragraph,
17 the arbitrator shall consider the following fac-
18 tors:

19 (1) The interests and welfare of the public
20 and the financial ability of the State Gov-
21 ernment to finance the cost items proposed
22 by each party to the impasse;

23 (2) Comparison of the wages, hours and
24 working conditions of the employees involved
25 in the arbitration proceeding with the
26 wages, hours and working conditions of other
27 employees performing similar services in
28 public and private employment in other ju-
29 risdictions competing in the same labor mar-
30 ket;

31 (3) The over-all compensation presently re-
32 ceived by the employees including direct
33 wage compensation, vacation, holidays and
34 excused time, insurance and pensions, medi-
35 cal and hospitalization benefits, the conti-
36 nuity and stability of employment, and all
37 other benefits received;

38 (4) Such other factors not confined to the
39 foregoing, which are normally and
40 traditionally taken into consideration in

1 the determination of wages, hours and work-
2 ing conditions through voluntary collective
3 bargaining, mediation, fact-finding, arbi-
4 tration or otherwise between the parties, in
5 the public service or in private employment,
6 including the average consumer price index;

7 (5) The need of State Government and the
8 Legislature for qualified employees;

9 (6) Conditions of employment in similar oc-
10 cupations outside State Government or the
11 legislative branch;

12 (7) The need to maintain appropriate rela-
13 tionships between different occupations in
14 State Government or in the legislative
15 branch; and

16 (8) The need to establish fair and reason-
17 able conditions in relation to job qualifi-
18 cations and responsibilities.

19 **Sec. 8. 26 MRSA §979-E, sub-§2, as amended by PL**
20 **1975, c. 612, §1, is further amended to read:**

21 2. Executive director to decide. In order to
22 insure to employees the fullest freedom in exercising
23 the rights guaranteed by this chapter, to insure a
24 clear and identifiable community of interest among
25 employees concerned, and to avoid excessive
26 fragmentation among bargaining units in State Govern-
27 ment and in the legislative branch, the executive di-
28 rector of the board or his designee shall decide in
29 each case the unit appropriate for purposes of col-
30 lective bargaining.

31 **Sec. 9. 26 MRSA §979-F, sub-§1, as enacted by PL**
32 **1973, c. 774, is amended to read:**

33 1. Voluntary recognition. Any state employee or-
34 ganization may file a request with the public employ-
35 er alleging that a majority of the state or
36 legislative employees in an appropriate bargaining
37 unit wish to be represented for the purpose of col-
38 lective bargaining between the public employer and
39 the employees' organization. Such request shall de-

1 scribe the grouping of jobs or positions which consti-
2 tute the unit claimed to be appropriate and shall
3 include a demonstration of majority support. Such re-
4 quest for recognition shall be granted by the public
5 employer unless the public employer desires that an
6 election determine whether the organization repre-
7 sents a majority of the members in the bargaining
8 unit.

9 **Sec. 10. 26 MRSA §979-F, sub-§2, ¶A, as amended**
10 by PL 1975, c. 612, §2, is further amended to read:

11 A. The executive director of the board or his
12 designee upon signed request of a public employer
13 alleging that one or more state or legislative
14 employees or state employee organizations have
15 presented to it a claim to be recognized as the
16 representative of a bargaining unit of state em-
17 ployees or a bargaining unit of legislative
18 employees, or upon signed petition of at least
19 30% of a bargaining unit of state employees or of
20 a bargaining unit of legislative employees that
21 they desire to be represented by an organization,
22 shall conduct a secret ballot election to deter-
23 mine whether the organization represents a major-
24 ity of the members of the bargaining unit. Such
25 an election may be conducted at suitable work lo-
26 cations or through the United States mail pro-
27 vided, nevertheless, that the procedures adopted
28 and employed by the Maine Labor Relations Board
29 shall maintain the anonymity of the voter from
30 both the employee organizations and the manage-
31 ment representatives involved.

32 **Sec. 11. 26 MRSA §979-F, sub-§2, ¶B, as enacted**
33 by PL 1973, c. 774, is amended to read:

34 B. The ballot shall contain the name of such or-
35 ganization and that of any other organization
36 showing written proof of at least 10% representa-
37 tion of the state employees within the unit, or
38 of the legislative employees within the unit to-
39 gether with a choice for any state or legislative
40 employee to designate that he does not desire to
41 be represented by any bargaining agent. Where
42 more than one organization is on the ballot and
43 no one of the 3 or more choices receives a major-

1 ity vote of the state employees voting, a run-off
2 election shall be held. The run-off ballot shall
3 contain the 2 choices which received the largest
4 and 2nd largest number of votes. When an organi-
5 zation receives the majority of votes of those
6 voting, the executive director of the board shall
7 certify it as the bargaining agent. The bargain-
8 ing agent certified as representing a bargaining
9 unit shall be recognized by the public employer
10 as the sole and exclusive bargaining agent for
11 all of the employees in the bargaining unit un-
12 less and until a decertification election by se-
13 cret ballot shall be held and the bargaining
14 agent declared by the executive director of the
15 board as not representing a majority of the unit.

16 Sec. 12. 26 MRSA §979-H, sub-§1, as enacted by
17 PL 1973, c. 774, is amended to read:

18 1. The board is empowered, as provided, to pre-
19 vent any person, the public employer, any state em-
20 ployee, any legislative employee, any state employee
21 organization or any bargaining agent from engaging in
22 any of the prohibited acts enumerated in section
23 979-C. This power shall not be affected by any other
24 means of adjustment or prevention that has been or
25 may be established by agreement, law or otherwise.

26 Sec. 13. 26 MRSA §979-H, sub-§2, as amended by
27 PL 1975, c. 697, §11, is further amended to read:

28 2. The public employer, any state employee, any
29 legislative employee, any state employee organization
30 or any bargaining agent which believes that any per-
31 son, the public employer, any state employee, any
32 legislative employee, any state employee organization
33 or any bargaining agent has engaged in or is engaging
34 in any such prohibited practice may file a complaint
35 with the executive director of the board stating the
36 charges in that regard. No such complaint ~~shall~~ may
37 be filed with the executive director until the com-
38 plaining party shall have served a copy thereof upon
39 the party complained of. Upon receipt of such com-
40 plaint, the executive director or his designee shall
41 review the charge to determine whether the facts as
42 alleged may constitute a prohibited act. If it is de-
43 termined that the facts do not, as a matter of law,

1 constitute a violation, the charge shall be dismissed
2 by the executive director, subject to review by the
3 board. If a formal hearing is deemed necessary by the
4 executive director or by the board, the executive di-
5 rector shall serve upon the parties to the complaint
6 a notice of the prehearing conference and of the
7 hearing before the board, that notice to designate
8 the time and place of hearing for the prehearing con-
9 ference or the hearing, as appropriate, provided that
10 no hearing shall be held based upon any alleged prohib-
11 ited practice occurring more than 6 months prior
12 to the filing of the complaint with the executive di-
13 rector. The party complained of shall have the right
14 to file a written answer to the complaint and to ap-
15 pear in person or otherwise and give testimony at the
16 place and time fixed for the hearing. In the discre-
17 tion of the board, any other person or organization
18 may be allowed to intervene in that proceeding and to
19 present testimony. Nothing in this subsection shall
20 may restrict the right of the board to require the
21 executive director or his designee to hold a
22 prehearing conference on any prohibited practice com-
23 plaint prior to the hearing before the board and tak-
24 ing whatever action, including dismissal, attempting
25 to resolve disagreements between the parties or rec-
26 ommending an order to the board, as he may deem ap-
27 propriate, subject to review by the board.

28 Sec. 14. 26 MRSa §979-H, sub-§6, as enacted by
29 PL 1973, c. 774, is amended to read:

30 6. Whenever a complaint is filed with the execu-
31 tive director of the board, alleging that the public
32 employer has violated section 979-C, subsection 1,
33 paragraph F, or alleging that a state employee, a
34 legislative employee or state employee organization
35 or bargaining agent has violated section 979-C, sub-
36 section 2, paragraph C, the party making the com-
37 plaint may simultaneously seek injunctive relief from
38 the Superior Court in the county in which the prohib-
39 ited practice is alleged to have occurred pending the
40 final adjudication of the board with respect to such
41 matter.

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STATEMENT OF FACT

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This bill amends the State Employees Labor Relations Act to include employees of the legislative branch under its provisions. The Legislative Council, or its designee, will exercise the function of the employer under this bill.

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