

MAINE STATE LEGISLATURE

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(New Title)
(New Draft of S.P. 132, L.D. 337)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1667

S.P. 557

In Senate, May 26, 1987

Reported by the Majority Report for the Committee on Labor and printed under Joint Rule 2. Original Bill sponsored by Senator Bustin of Kennebec. Cosponsored by: Representative Clark of Millinocket.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

AN ACT to Amend the Municipal Public
Employees Labor Relations Law.

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

Sec. 1. 26 MRSA §962, sub-§4-C is enacted to read:

4-C. Economic issue. "Economic issue" means an issue that concerns wages, pensions or insurance.

Sec. 2. 26 MRSA §965, sub-§4, as amended by PL 1975, c. 564, §18, is repealed and the following enacted in its place:

1 4. Arbitration. Notwithstanding any other law,
2 the following procedure is established to resolve
3 collective bargaining disputes. In addition to the
4 30-day period referred to in subsection 3, the par-
5 ties shall have 15 more days, making a total period
6 of 45 days from the submission of findings and recom-
7 mendations, in which to make a good faith effort to
8 resolve their controversy.

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

15 If they do not jointly agree to such an arbitration
16 procedure within 10 days after the end of the 45-day
17 period, then either party may, by written notice to
18 the other and to the executive director, request that
19 their differences be submitted to a board of 3 arbi-
20 trators. The bargaining agent and the public employ-
21 er, within 5 days of the request, each shall select
22 and name one arbitrator and shall immediately notify
23 each other and the executive director in writing of
24 the name and address of the person so selected. The
25 executive director, within 10 days from the request,
26 shall select and name a neutral arbitrator from the
27 neutral list of fact finders. The executive director
28 shall promptly notify each party of the name and ad-
29 dress of the chairman-neutral arbitrator so appointed
30 in writing. The neutral arbitrator so selected shall
31 not be, without the consent of both parties, the same
32 person who was selected as mediator pursuant to sub-
33 section 2, nor any member of the fact-finding board
34 selected pursuant to subsection 3. As soon as possi-
35 ble after the selection of the neutral arbitrator,
36 the 3 arbitrators or, if either party has not se-
37 lected its arbitrator, the 2 arbitrators, as the case
38 may be, shall meet as soon as possible with the par-
39 ties or their representatives, or both, either joint-
40 ly or separately, make inquiries and investigations,
41 hold hearings or take any other steps that they con-
42 sider appropriate. The arbitration proceedings shall
43 be conducted in accordance with the rules and proce-
44 dures adopted by the board and shall closely follow
45 the rules and procedures of the American Arbitration

1 Association. The hearings shall be informal, and the
2 rules of evidence prevailing in judicial proceedings
3 shall not be binding. Any and all documentary evi-
4 dence and other data deemed relevant by the arbitra-
5 tors may be received in evidence. The arbitrators may
6 administer oaths and require by subpoena the attend-
7 ance and testimony of witnesses, the production of
8 books, records and other evidence relative or perti-
9 nent to the issues represented to them for determina-
10 tion.

11 At least 7 days before the hearing, the neutral arbi-
12 trator shall provide the notice of the time and place
13 of the hearing to the employer, bargaining agent and
14 executive director. If the controversy is not re-
15 solved by the parties, the arbitrators shall proceed
16 as follows: At least 2 days before the hearing be-
17 gins, each party shall file with the executive direc-
18 tor and the arbitrator or arbitrators and deliver to
19 the other party a proposed collective bargaining
20 agreement, in numbered paragraphs, which that party
21 is willing to execute and the cost data for all pro-
22 visions of the proposed agreement. At the commence-
23 ment of the hearing, each party shall file with the
24 arbitrator or arbitrators a reply setting forth those
25 paragraphs of the proposed agreement of the other
26 party which it is willing to accept, and those para-
27 graphs of the proposed agreement of the other party
28 which it is unwilling to accept, together with any
29 alternative contract language which it would accept
30 in lieu of those paragraphs which it is unwilling to
31 accept. At any time before the 10-day period expires,
32 after the taking of the testimony, the parties may
33 jointly file with the arbitrator or arbitrators stip-
34 ulations setting forth the agreement provisions which
35 both parties have agreed to accept. Within 5 days af-
36 ter the conclusion of taking testimony, the arbitra-
37 tor or arbitrators shall forward to each party and to
38 the executive director an arbitration statement set-
39 ting forth in numbered paragraphs all agreement pro-
40 visions agreed upon by both parties in the proposed
41 agreements, the replies and the stipulations, and
42 stating, in numbered paragraphs, those issues which
43 are resolved. The arbitration statement shall set
44 forth in numbered paragraphs all of the unresolved
45 items and identify which of the unresolved items are
46 economic issues. The determination of the majority of

1 arbitrators as to the issues in dispute and which is-
2 sues are economic is conclusive. Within 10 days after
3 the conclusion of the taking of testimony, each party
4 shall file with the arbitrator or arbitrators, with a
5 copy to the opposing party, its statement of last
6 best offer setting forth, in numbered paragraphs cor-
7 responding to the statement of unresolved issues con-
8 tained in the arbitration statement, the final agree-
9 ment proposed by that party. Within 20 days after the
10 last day for filing the statements of last best of-
11 fer, the arbitrator or arbitrators shall issue their
12 decision on all unresolved issues set forth in the
13 arbitration statement. A copy of the decision shall
14 be distributed to each party and to the executive di-
15 rector no later than May 1st. The board shall adopt
16 rules and procedures to ensure that the May 1st date
17 is achieved. The arbitrator or arbitrators shall
18 treat each unresolved issue set forth in the arbitra-
19 tion statement as a separate question to be decided.
20 In deciding each economic issue, a majority of arbi-
21 trators shall accept the final provision relating to
22 that unresolved issue as contained in the statement
23 of last best offer of one party or the other party.
24 In deciding all other questions, a majority of arbi-
25 trators shall accept the final provision relating to
26 the unresolved issue as contained in the statement of
27 last best offer of one party or the other party.

28 Within 10 days after the arbitrators' decision is is-
29 sued, the parties shall sign an agreement binding
30 each party to the decision, unless, within that
31 10-day period, the parties both agree to a different
32 agreement and execute that agreement in the form of a
33 binding contract. When the final contract differs
34 from the arbitrators' decision, a copy of the con-
35 tract shall be forwarded to the executive director.
36 The results of all arbitration proceedings, recommen-
37 dations and awards conducted under this section shall
38 be filed with the Maine Labor Relations Board at the
39 office of its executive director simultaneously with
40 the submission of the award to the parties. In the
41 event the parties settle their dispute during the ar-
42 bitration proceeding, the arbitrator or the chairman
43 of the arbitration panel shall submit a report of his
44 activities to the Executive Director of the Maine La-
45 bor Relations Board within 5 days after the arbitra-
46 tion proceeding has terminated.

- 1 In reaching a decision under this subsection, the ar-
2 bitrator or arbitrators shall consider the following
3 factors:
- 4 A. The negotiations between the parties prior to
5 arbitration;
- 6 B. The interests and welfare of the public and
7 financial ability of the governmental unit to fi-
8 nance the cost items proposed by each party to
9 the dispute;
- 10 C. Changes in the cost of living;
- 11 D. The interests and welfare of the public em-
12 ployee group;
- 13 E. Comparison of the wages, hours and working
14 conditions, including, but not limited to, haz-
15 ards of the job, of the employees involved in the
16 arbitration proceeding with the wages, hours and
17 working conditions of other employees performing
18 similar services in public and private employment
19 in other jurisdictions competing in the same la-
20 bor market;
- 21 F. The overall compensation presently received
22 by the public employees, including direct wage
23 compensation, vacation, holidays, excused time,
24 insurance, pensions, medical and hospitalization
25 benefits, the continuity and stability of employ-
26 ment and all other benefits needed;
- 27 G. Any other factors not confined to this sub-
28 section that are normally and traditionally taken
29 into consideration in the determination of wages,
30 hours and working conditions through voluntary
31 collective bargaining, mediation, fact finding,
32 arbitration or otherwise between the parties in
33 the public service or in private employment, in-
34 cluding wage and price statistics compiled by
35 State Government or Federal Government;
- 36 H. The need of the public employer for qualified
37 public employees;
- 38 I. Conditions of employment in similar occupa-
39 tions outside the governmental unit;

J. The need to maintain appropriate relationships between different occupations in the governmental unit; and

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

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

STATEMENT OF FACT

When the Legislature gave public employees the right to organize and bargain collectively, it specifically denied those same employees the right to strike. In place of the right to strike as a means of encouraging dispute resolutions, the law established a 3-step process of dispute resolution: Mediation, fact finding and arbitration. Arbitration currently is not binding on wages, pensions and insurance which are defined as economic issues in this new draft.

While the State's public bargaining laws have generally worked fairly well, in some instances the lack of a more powerful incentive to agree has caused employees to be without a contract for periods of 2 years or more. This new draft addresses that shortcoming for public employees by making arbitration fully binding on both parties.

There are several safeguards built into the new draft to ensure that binding arbitration will only be used as a final resort and not the standard means of contract resolution. The new draft authorizes arbitration to begin only after fact finding, followed by 45 days to come to an agreement. Only municipal public employees are covered by this new draft.

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

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