

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 300, L.D. 798, Bill, "An Act to Include Salaries, Pensions and Insurance for Binding Arbitration under the Municipal Public Employees Labor Relations Law"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 26 MRSA §962, sub-§3-A is enacted to read:

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Sec. 2. 26 MRSA §965, sub-§4, as amended by PL 1975, c. 564, §18, is repealed and the following enacted in its place:

4. Arbitration. Notwithstanding any other law, the following procedure is established to resolve collective bargaining disputes under this chapter. In addition to the 30-day period referred to in subsection 3, the parties shall have 15 more days, making a total period of 45 days from the submission of findings and recommendations, in which to make a good faith effort to resolve their controversy.

A. If the parties have not resolved their controversy by the end of the 45-day period, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy.

If the parties do not jointly agree to such an arbitration procedure within 10 days after the end of the 45-day period, then either party may request that their differences be submitted to a panel of 3 arbitrators. This request must be in writing and must be sent to the opposing party and to the executive director.

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1 (1) Within 5 days after the request is received by the
3 opposing party, the bargaining agent and the public
5 employer each shall select one arbitrator and shall
7 immediately notify the other party and the executive
9 director in writing of the name and address of the
11 person so selected.

13 (2) Within 10 days after receiving the request, the
15 executive director shall select a neutral arbitrator
17 from the neutral list of fact finders. The executive
19 director shall promptly notify each party in writing of
21 the name and address of the neutral arbitrator selected
23 by the executive director. The neutral arbitrator
25 shall not be, without the consent of both parties, the
27 same person selected as mediator under subsection 2,
29 nor any member of the fact-finding board selected under
31 subsection 3. The neutral arbitrator selected by the
33 executive director shall serve as chair of the
35 arbitration panel.

37 B. As soon as possible after the neutral arbitrator is
39 selected, the 3 arbitrators or, if either party has not
41 selected its arbitrator, the 2 arbitrators, shall meet with
43 the parties or their representatives, or both, either
45 jointly or separately, make inquiries and investigations,
47 hold hearings or take any other steps that the arbitrators
49 consider appropriate.

51 (1) The arbitration proceeding shall be conducted in
53 accordance with the rules and procedures adopted by the
55 board and shall closely follow the rules and procedures
57 of the American Arbitration Association.

59 (2) The hearings shall be informal, and the rules of
61 evidence applicable to judicial proceedings shall not
63 be binding. All documentary evidence and other data
65 considered relevant by the arbitrators may be received
67 in evidence.

69 (3) The arbitrators may administer oaths and require
71 by subpoena the attendance and testimony of witnesses
73 and the production of books, records and other evidence
75 relevant to the issues represented to them for
77 determination.

79 C. At least 7 days before the arbitration hearing, the
81 neutral arbitrator shall notify the employer, bargaining
83 agent and executive director of the time and place of the
85 hearing. If the controversy is not resolved by the parties,
87 the arbitrators shall proceed as follows.

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1 (1) At least 2 days before the hearing begins, each
3 party shall file with the executive director and the
5 arbitrator or arbitrators and deliver to the other
7 party a proposed collective bargaining agreement, in
 numbered paragraphs, which that party is willing to
 execute and the cost data for all provisions of the
 proposed agreement.

9 (2) At the commencement of the hearing, each party
11 shall file with the arbitrator or arbitrators a reply
 setting forth:

13 (a) Those paragraphs of the agreement proposed by
15 the other party which it is willing to accept; and

17 (b) Those paragraphs of the proposed agreement
19 which it is unwilling to accept, together with any
 alternative contract language which it would
 accept in place of those paragraphs.

21 (3) Within 5 days after the conclusion of taking
23 testimony, the parties may jointly file with the
25 arbitrator or arbitrators stipulations setting forth
 agreement provisions which both parties have agreed to
 accept.

27 (4) Within 10 days after the conclusion of taking
29 testimony, the arbitrator or arbitrators shall forward
31 to each party and to the executive director an
 arbitration statement setting forth:

33 (a) In numbered paragraphs, all provisions in the
35 proposed agreements that are agreed to by both
 parties;

37 (b) The replies and any stipulations filed by the
39 parties, and stating, in numbered paragraphs,
 those issues which are resolved; and

41 (c) In numbered paragraphs, all of the unresolved
43 items and identifying which of the unresolved
 items are economic issues.

45 The determination of the majority of arbitrators as to
47 the issues in dispute and which issues are economic is
 conclusive.

49 (5) Within 5 days after receiving the arbitration
51 statement, each party shall file a statement of last
 best offer with the arbitrator or arbitrators and send
 a copy to the opposing party. The statement of last
 best offer shall set forth, in numbered paragraphs

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1 corresponding to the statement of unresolved issues
 3 contained in the arbitration statement, the final
 agreement proposed by that party.

5 D. Within 20 days after the last day for filing the
 7 statements of last best offer, the arbitrator or arbitrators
 9 shall issue their decision on all unresolved issues set
 11 forth in the arbitration statement. A copy of the decision
 13 shall be immediately distributed to each party and to the
 15 executive director. The arbitrator or arbitrators shall
 17 treat each unresolved issue set forth in the arbitration
 statement as a separate question to be decided. In deciding
 each issue, a majority of arbitrators shall accept the final
 provision relating to that unresolved issue as contained in
 the statement of last best offer of one party or the other
 party. These decisions are subject to review by the
 Superior Court in the manner specified by section 972.

19 In reaching a decision under this paragraph, the arbitrator
 21 or arbitrators shall consider the following factors:

23 (1) The negotiations between the parties before
 arbitration;

25 (2) The interests and welfare of the public and the
 27 financial ability of the governmental unit to finance
 the cost items proposed by each party to the dispute;

29 (3) Changes in the cost of living;

31 (4) The interests and welfare of the public employee
 group;

33 (5) Comparison of the wages, hours and working
 35 conditions, including, but not limited to, hazards of
 37 the job, of the employees involved in the arbitration
 39 proceeding with the wages, hours and working conditions
 of other employees performing similar services in
 public and private employment in other jurisdictions
 competing in the same labor market;

41 (6) The overall compensation presently received by the
 43 public employees, including direct wage compensation,
 45 vacation, holidays, excused time, insurance, pensions,
 47 medical and hospitalization benefits, the continuity
 and stability of employment and all other benefits
 needed;

49 (7) Any other factors not confined to this subsection
 51 that are normally and traditionally taken into
 consideration in the determination of wages, hours and
 working conditions through voluntary collective

1 bargaining, mediation, fact finding, arbitration or
3 otherwise between the parties in the public service or
5 in private employment, including wage and price
7 statistics compiled by State Government or Federal
9 Government;

11 (8) The need of the public employer for qualified
13 public employees;

15 (9) Conditions of employment in similar occupations
17 outside the governmental units;

19 (10) The need to maintain appropriate relationships
21 between different occupations in the governmental unit;
23 and

25 (11) The need to establish fair and reasonable
27 conditions in relation to job qualifications and
29 responsibilities.

31 E. Within 10 days after the arbitrators' decision is
33 issued, the parties shall sign an agreement binding each
35 party to the decision, unless, within that 10-day period,
37 the parties agree to a different agreement and execute that
39 agreement in the form of a binding contract. When the final
41 contract differs from the arbitrators' decision, a copy of
43 the contract shall be forwarded to the executive director.
45 The results of all arbitration proceedings, recommendations
47 and awards conducted under this section shall be filed with
49 the board at the executive director's office simultaneously
51 with the submission of the award to the parties. If the
parties settle their dispute during the arbitration
proceeding, the arbitrator or the chair of the arbitration
panel shall submit a report of the arbitrator's or panel's
activities to the executive director within 5 days after the
arbitration proceeding has terminated.

F. Nothing in this subsection 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 municipal 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 consisting of
mediation, fact finding and arbitration. Arbitration currently
is not binding on wages, pensions and insurance which are defined

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1 as economic issues in this amendment. This amendment includes
2 those issues within the scope of binding arbitration under the
3 municipal public employees labor relations laws.

5 There are several safeguards built into the amendment to
6 ensure that binding arbitration will only be used as a final
7 resort and not the standard means of contract resolution. The
8 amendment authorizes arbitration to begin only after fact
9 finding, and allows 45 additional days to come to an agreement.
10 The means of arbitration is so-called "issue-by-issue last best
11 offer," which is what experts on labor laws believe to be the
12 greatest incentive to both parties to come to an agreement and
13 not resort to arbitration. Each party, labor and management,
14 must submit a list of proposed contract provisions in separate
15 numbered paragraphs before arbitration begins. Each party then
16 selects those contract items submitted by the opposing party with
17 which they can reach agreement without arbitration. Only those
18 items which are not agreed to are subject to arbitration. This
19 process encourages the parties to reach a negotiated settlement
20 on each issue before arbitration begins.

21 After the issues subject to arbitration are identified, each
22 party must file a final "last best offer" on each unresolved item
23 along with any necessary cost data relating to that item. The
24 arbitrators must then select one or the other "last best offer"
25 of the parties on each disputed issue; the arbitrators may not
26 choose a resolution of a disputed issue other than as offered by
27 one or the other party. This process is designed to force the
28 parties to make reasonable "last best offers," since they know
29 that, if their offer is too extravagant, the arbitrators are
30 likely to choose the opposing party's offer. This process also
31 encourages negotiated settlements of disputed items since the
32 parties would presumably prefer to retain control over the final
33 decisions on disputed issues. In other words, they stand to lose
34 completely to the opposing party if the issue goes to
35 arbitration, whereas, if they negotiate a settlement, they can
36 exert greater control over the issues important to them.

37 The amendment provides a final opportunity for the parties
38 to negotiate a settlement within 10 days after the arbitrators'
39 decision is issued. If the parties fail to agree to a negotiated
40 settlement within this period, the arbitrators' rulings are
41 binding on both parties for all issues submitted to arbitration.

42 The discretion of arbitrators in making their decisions
43 under the amendment is limited by the adoption of 11 specific
44 criteria that the arbitrators must consider. These criteria are
45 adopted to ensure that the legislative policy to achieve fair and
46 reasonable collective bargaining contracts is implemented by the
47 arbitrators. For example, one of the criteria that the
48 arbitrators must consider is the ability of the local
49 governmental unit to pay for a cost item in the proposed
50