

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1474

S.P. 539

In Senate, May 4, 1989

Reference to the Committee on Education suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DUTREMBLE of York.

Cosponsored by Speaker MARTIN of Eagle Lake and President PRAY of Penobscot.

STATE OF MAINE

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

An Act to Establish a Statewide Contract for Teachers.



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

3 **Sec. 1. 20-A MRSA §405, sub-§10, is enacted to read:**

5 10. Collective bargaining negotiations with teachers. The
7 state board shall act on behalf of the State in collective
7 bargaining negotiations under Title 26, chapter 10-A.

9 **Sec. 2. 20-A MRSA §13405 is enacted to read:**

11 **§13405. Statewide teachers' contract**

13 Beginning in 1991-92, teachers' compensation and benefits
15 shall be negotiated in accordance with Title 26, chapter 10-A.

17 **Sec. 3. 20-A MRSA §15602, sub-§4 is enacted to read:**

19 4. Teacher salaries. Effective 1991-92, the State shall
21 pay 100% of teachers' compensation and benefits negotiated in
23 accordance with Title 26, chapter 10-A.

25 **Sec. 4. 20-A MRSA §15603, sub-§27-A is enacted to read:**

27 27-A. Teachers' compensation and benefits. "Teachers'
29 compensation and benefits" means wages, salaries, pensions and
31 insurance benefits paid to public school teachers negotiated
33 under Title 26, chapter 10-A.

35 **Sec. 5. 20-A MRSA §15604, sub-§1, ¶¶I and J, as enacted by PL**
37 **1983, c. 859, Pt. G, §§2 and 4, are amended to read:**

39 I. Cost of state expenditures for teachers' retirement
41 benefits; and

43 J. Early childhood educational programs; and

45 **Sec. 6. 20-A MRSA §15604, sub-§1, ¶K is enacted to read:**

47 K. Teachers' compensation and benefits.

49 **Sec. 7. 20-A MRSA §15607, sub-§12, as enacted by PL 1987, c.**
51 **850, §§3 and 5, is amended to read:**

12. Appropriation for special education tuition and costs
14 for out-of-district placements. Appropriate the necessary funds
16 for special education tuition under section 15612, subsection
18 10; and

20 **Sec. 8. 20-A MRSA §15607, sub-§13 is enacted to read:**

22 13. Appropriation for teachers' compensation and benefits.
24 Appropriate the necessary funds for teachers' compensation and

1 benefits negotiated under Title 26, chapter 10-A as required by
2 section 15611-A.

3 **Sec. 9. 20-A MRSA §15611-A** is enacted to read:

4 **§15611-A. State share of teachers' compensation and benefits**

5 The State shall pay 100% of teachers' compensation and
6 benefits negotiated under Title 26, chapter 10-A.

7 **Sec. 10. 26 MRSA §965, sub-§7** is enacted to read:

8 7. Compensation and benefits for teachers. The negotiation
9 of wages, salaries, pensions and insurance for teachers, as
10 defined in section 999-A, subsection 5, is governed by chapter
11 10-A. All other subjects of collective bargaining shall be
12 negotiated as provided in this chapter.

13 **Sec. 11. 26 MRSA §967, sub-§3** is enacted to read:

14 3. Bargaining agent for teachers. The bargaining agent for
15 bargaining units composed of teachers, as defined in section
16 999-A, shall be determined under section 999-F. The bargaining
17 agent for the statewide teacher bargaining unit determined under
18 section 999-F shall represent all local teacher bargaining units
19 under this chapter.

20 **Sec. 12. 26 MRSA c. 10-A** is enacted to read:

21 **CHAPTER 10-A**

22 **TEACHER LABOR RELATIONS LAW**

23 **§999. Purpose**

24 It is declared to be the public policy of this State and it
25 is the purpose of this chapter to promote a uniform level of
26 wages, salaries, pensions and insurance for teachers through
27 statewide bargaining and to prevent the overburdening of the
28 local property tax by paying for teachers' wages, salaries,
29 pensions and insurance through the General Fund.

30 **§999-A. Definitions**

31 As used in this chapter, unless the context otherwise
32 indicates, the following terms have the following meanings.

33 1. Bargaining agent. "Bargaining agent" means the
34 organization, association or individual representative of an
35 organization or association which has as its primary purpose the
36 representation of teachers in their employment relations with
37 employers, and which has been determined by the public employer

1 or by the executive director to be the choice of the majority of
2 the statewide teacher bargaining units under section 999-F as
3 their representative.

5 2. Board or Maine Labor Relations Board. "Board" or "Maine
6 Labor Relations Board" means the Maine Labor Relations Board
7 referred to in section 968.

9 3. Executive director. "Executive director" means the
10 Executive Director of the Maine Labor Relations Board.

11 4. State board. "State board" means the State Board of
12 Education established in Title 5, section 12004-C, subsection 1.

13 5. Teacher. "Teacher" means any teacher, as defined in
14 Title 20-A, section 13502, subsection 2, who is included in a
15 local bargaining unit of a public employer under chapter 9-A.

16 §999-B. Right of teachers to join labor organizations

17 No one may directly or indirectly interfere with,
18 intimidate, restrain, coerce or discriminate against teachers or
19 a group of teachers in the free exercise of their rights to
20 voluntarily join, form and participate in the activities of
21 organizations of their own choosing for the purposes of
22 representation and collective bargaining, or in the free exercise
23 of any other right under this chapter.

24 §999-C. Prohibited acts of public employers, teachers and teacher
25 organizations

26 1. State board prohibitions. The state board and its
27 representatives and agents may not:

28 A. Interfere with, restrain or coerce teachers in the
29 exercise of the rights guaranteed in section 999-B;

30 B. Encourage or discourage membership in any teacher
31 organization by discrimination in regard to hire or tenure
32 of employment or any term or condition of employment;

33 C. Dominate or interfere with the formation, existence or
34 administration of any teacher organization;

35 D. Discharge or otherwise discriminate against a teacher
36 because the teacher has signed or filed any affidavit,
37 petition or complaint or given any information or testimony
38 under this chapter;

39 E. Refuse to bargain collectively with the bargaining agent
40 of its teachers as required by section 999-D; and

1 F. Blacklist any teacher organization or its members for
2 the purpose of denying them employment.

3
4 2. Teacher prohibitions. Teachers, teacher organizations,
5 their agents, members and bargaining agents may not:

6
7 A. Interfere with, restrain or coerce teachers in the
8 exercise of the rights guaranteed in section 999-B or the
9 state board in the selection of its representative for
10 purposes of collective bargaining or the adjustment of
11 grievances;

12
13 B. Refuse to bargain collectively with the state board as
14 required by section 999-D; or

15
16 C. Engage in:

17 (1) A work stoppage;

18 (2) A slowdown;

19 (3) A strike; or

20 (4) Blacklisting the state board for the purpose of
21 preventing it from filling teacher vacancies.

22
23 3. Violations. Violations of this section shall be
24 processed by the board in the manner provided in section 999-G,
25 subsection 3.

26
27 §999-D. Obligation to bargain

28
29 1. Negotiations. It is the obligation of the state board
30 and the bargaining agent to bargain collectively. "Collective
31 bargaining" means their mutual obligation to:

32
33 A. Meet at reasonable times;

34
35 B. Meet within 10 days after receipt of written notice from
36 the other party requesting a meeting for collective
37 bargaining purposes, provided the parties have not otherwise
38 agreed in a prior written contract;

39
40 C. Confer and negotiate in good faith with respect to
41 wages, salaries, pensions and insurance and contract
42 grievance arbitration, except that by this obligation
43 neither party is compelled to agree to a proposal or is
44 required to make a concession. No other subjects may be
45 bargained for under this chapter;
46
47
48
49

1 D. Execute in writing any agreements arrived at, the term
3 of any such agreement, which shall not exceed 3 years, to be
 subject to negotiation; and

5 E. Participate in good faith in the mediation, fact-finding
7 and arbitration procedures required by this section.

9 The bargaining agent shall serve written notice of request for
11 collective bargaining under this chapter on the state board at
13 least 120 days before the conclusion of the current fiscal
 operating budget, except that this requirement is waived if a
 bargaining agent of a newly formed bargaining unit is recognized
 or certified during the period not more than 120 days nor less
 than 30 days before the end of the fiscal period.

15 2. Mediation. This subsection governs the mediation of
17 disputes between the employer and teachers or their bargaining
 agent.

19 A. It is the declared policy of the State to provide full
21 and adequate facilities for the settlement of disputes
23 between the state board and teachers or their
 representatives and other disputes subject to settlement
 through mediation.

25 B. Mediation procedures shall be followed whenever either
27 party to a controversy requests those services before
29 arbitration, or, in the case of disputes affecting the state
31 board, teachers or their respective representatives,
 whenever requested by either party before arbitration or at
 any time on motion of the Maine Labor Relations Board or its
 executive director.

33 C. The panel of mediators established in section 965,
35 subsection 2, shall be used in mediation under this
37 subsection. The costs for services rendered and expenses
39 incurred by members of the panel of mediators shall be paid
41 by the state board for those mediation cases not exceeding 3
43 days in length from an appropriation for the panel which
45 shall be included in the budget of the Public Employees
47 Labor Relations Board. Any costs for services rendered and
49 expenses incurred by the panel of mediators beyond the 3rd
51 mediation day per case shall be shared equally by the
 parties to the proceedings, except that, on a showing by the
 teachers or their representative that the payment would
 impose undue financial hardship, the executive director may
 waive all or part of the obligation. The amount waived
 shall be paid from the appropriation in this paragraph.
 Authorization for services rendered and expenditures
 incurred by members of the panel shall be the responsibility
 of the executive director.

1 D. The state board, the union or the teachers involved in
3 collective bargaining shall notify the executive director,
5 in writing, at least 30 days before the expiration of a
7 contract, or at least 30 days before entering into
9 negotiations for a first contract between the state board
11 and the teachers, or whenever a dispute arises between the
13 parties threatening interruption of work, or under both
15 conditions.

17 E. The executive director shall serve as executive director
19 of the panel of mediators. Upon request of one or both of
21 the parties to a dispute between the state board and
23 teachers, the executive director shall, or upon the
25 director's own motion or motion of the Maine Labor Relations
27 Board may, offer the services of one or more members of the
29 panel to be selected by the executive director to serve as
31 mediator or mediators in a dispute. The member or members
33 so selected shall make every reasonable effort to encourage
35 the parties to the dispute to settle their differences by
37 conference or other peaceful means. If the mediator or
41 mediators are unable to accomplish this objective and to
43 obtain an amicable settlement of the dispute between the
45 parties, the mediator or mediators shall advise the parties
47 of the services available to assist them in settlement of
49 their dispute. At this time, the mediator or mediators
51 shall submit a written report to the executive director
stating the action or actions that have been taken and the
results of their endeavors.

1 F. The services of the panel of mediators shall not be
3 invoked in any dispute regarding a matter of grievance
5 between the parties to an agreement, if the agreement
7 provides for an alternate method of settlement of the
9 grievance dispute; the services of the panel of mediators
11 shall always be available as a technique for impasse
13 resolution in contract negotiations and may be invoked as
15 described in paragraph B.

17 G. Any information disclosed by either party to a dispute
19 to the panel or any of its members in the performance of
21 this subsection is privileged.

23 3. Fact-finding. This subsection governs fact-finding
25 between the state board and teachers or their bargaining agent.

27 A. If the parties, either with or without the services of a
29 mediator, are unable to effect a settlement of their
31 controversy, they may jointly agree either to call upon the
33 Maine Labor Relations Board to arrange for fact-finding
35 services and recommendations to be provided by the State
37 Board of Arbitration and Conciliation, or to pursue some
41 other mutually acceptable fact-finding procedure, including

1 use of the Federal Mediation and Conciliation Service or the
2 American Arbitration Association according to their
3 respective procedures, rules and regulations.

5 B. If the parties do not jointly agree to call upon the
6 Maine Labor Relations Board or to pursue some other
7 procedure, either party to the controversy may request the
8 executive director to assign a fact-finding panel. If so
9 requested, the executive director shall appoint a
10 fact-finding panel, ordinarily of 3 members, in accordance
11 with rules and procedures prescribed by the board for making
12 the appointment. The fact-finding panel shall be appointed
13 from the list maintained by the board under section 965,
14 subsection 3. Any person who has actively participated as
15 the mediator in the immediate proceedings for which
16 fact-finding has been called shall not sit on that
17 fact-finding panel. The panel shall hear the contending
18 parties to the controversy. It may request statistical data
19 and reports on its own initiative in addition to the data
20 regularly maintained by the Bureau of Labor and Industry,
21 and may administer oaths and require by subpoena the
22 attendance and testimony of witnesses, the production of
23 books, records and other evidence pertinent to the issues
24 represented to them. The members of the fact-finding panel
25 shall submit their findings and recommendations only to the
26 parties and to the executive director.

27
28 C. The parties shall have 30 days, after the submission of
29 findings and recommendations from the fact finders, in which
30 to make a good faith effort to resolve their controversy.
31 If the parties have not resolved their controversy by the
32 end of that period, either party or the executive director
33 may, but not until the end of that period unless the parties
34 otherwise jointly agree, make the fact-finding and
35 recommendations public.

36
37 D. If the parties do not agree to follow the fact-finding
38 procedures outlined in paragraph A, they may jointly apply
39 to the executive director or a designee to waive
40 fact-finding. The executive director or a designee may
41 accept or refuse to accept the parties' agreement to waive
42 fact-finding. This decision is not reviewable.

43
44 4. Arbitration. In addition to the 30-day period referred
45 to in subsection 3, the parties shall have 15 more days, making a
46 total period of 45 days from the submission of findings and
47 recommendations, in which to make a good faith effort to resolve
48 their controversy.

49
50 If the parties have not resolved their controversy by the end of
51 this 45-day period, they may jointly agree to an arbitration
procedure.

1 If they do not jointly agree to an arbitration procedure within
3 10 days after the end of the 45-day period, then either party
5 may, by written notice to the other, request that their
7 differences be submitted to a board of 3 arbitrators. The
9 bargaining agent and the state board shall within 5 days of this
11 request each select and name one arbitrator and shall immediately
13 thereafter notify each other in writing of the name and address
15 of the person so selected. The 2 arbitrators so selected and
17 named shall, within 10 days from the request, agree upon and
19 select and name a neutral arbitrator. If either party does not
21 select its arbitrator or if the 2 arbitrators fail to agree upon,
23 select and name a neutral arbitrator within 10 days, either party
25 may request the American Arbitration Association to use its
27 procedures for the selection of the neutral arbitrator. As soon
29 as possible after receiving the request, the neutral arbitrator
31 will be selected in accordance with rules and procedures
33 prescribed by the American Arbitration Association for making the
35 selection. The neutral arbitrator so selected may not, without
37 the consent of both parties, be the same person who was selected
39 as mediator under subsection 2 nor any member of the fact-finding
41 board selected under subsection 3. As soon as possible after the
43 neutral arbitrator is selected, the 3 arbitrators or, if either
45 party has not selected its arbitrator, the 2 arbitrators, as the
47 case may be, shall meet with the parties or their
49 representatives, or both, forthwith, either jointly or
51 separately, make inquiries and investigations, hold hearings or
take any other steps that they consider appropriate. If the
neutral arbitrator is selected through the procedures of the
American Arbitration Association, the arbitration proceedings
shall be conducted in accordance with the rules and procedures of
the American Arbitration Association. The hearing shall be
informal, and the rules of evidence applied in judicial
proceedings are not binding. Any and all documentary evidence
and other data considered relevant by the arbitrators may be
received in evidence. The arbitrators may administer oaths and
require by subpoena the attendance and testimony of witnesses,
the production of books, records and other evidence pertinent to
the issues represented to them for determination.

41 If the controversy is not resolved by the parties themselves, the
43 arbitrators shall recommend terms of settlement and may make
45 findings of fact. These recommendations and findings are
47 advisory only and shall be made, if reasonably possible, within
49 30 days after the selection of the neutral arbitrator. The
51 arbitrators may, in their discretion, make the recommendations
and findings public. Either party may make the recommendations
and findings public if agreement is not reached with respect to
the findings and recommendations within 10 days after their
receipt from the arbitrators. The results of all arbitration
proceedings, recommendations and awards conducted under this
section shall be filed with the Maine Labor Relations Board at

1 the offices of its executive director simultaneously with the
2 submission of the recommendations and award to the parties. If
3 the parties settle their dispute during the arbitration
4 proceeding, the arbitrator or the chair of the arbitration panel
5 shall submit a report of their activities to the executive
6 director within 5 days after the arbitration proceeding has
7 terminated.

9 5. Costs. The costs for the services of the mediator, the
10 members of the fact-finding board and of the neutral arbitrator,
11 including, if any, per diem expenses, and actual and necessary
12 travel and subsistence expenses and the costs of hiring the
13 premises where any mediation, fact-finding or arbitration
14 proceedings are conducted, shall be shared equally by the parties
15 to the proceedings. All other costs shall be assumed by the
16 party incurring them. The services of the members of the state
17 board of Maine's panel of mediators and of the State Board of
18 Arbitration and Conciliation are available to the parties without
19 cost.

21 6. Arbitration administration. The cost for services
22 rendered and expenses incurred by the State Board of Arbitration
23 and Conciliation, as defined in section 931, shall be paid by the
24 state board from an appropriation for the State Board of
25 Arbitration and Conciliation which shall be included in the
26 budget of the Maine Labor Relations Board. Authorization for
27 services rendered and expenditures incurred by members of the
28 State Board of Arbitration and Conciliation are the
29 responsibility of the executive director.

31 **§999-E. Bargaining unit; determination**

33 1. Statewide bargaining unit. The bargaining unit for
34 purposes of this chapter is composed of all local bargaining
35 units formed under section 966 which are composed of teachers.

37 2. Bargaining unit standards. In the event of a dispute
38 between the state board and a teacher or teachers as to the
39 appropriateness of a unit for purposes of collective bargaining
40 or between the state board and a teacher or teachers as to
41 whether a supervisory or other position is to be included in the
42 bargaining unit, the executive director or the director's
43 designee shall make the determination, except that anyone
44 excepted from the definition of teacher under section 999-A may
45 not be included in a bargaining unit. The executive director or
46 the director's designee conducting unit determination proceedings
47 may administer oaths and require by subpoena the attendance and
48 testimony of witnesses, the production of books, records and
49 other evidence pertinent to the issues represented to them. In
50 determining whether a supervisory position should be excluded
51 from the bargaining unit, the executive director or the
director's designee shall consider, among other criteria, if the

1 principal functions of the position are characterized by
2 performing such management control duties as scheduling,
3 assigning, overseeing and reviewing the work of subordinate
4 teachers; or performing such duties as are distinct and
5 dissimilar from those performed by the teachers supervised; or
6 exercising judgment in adjusting grievances, applying other
7 established personnel policies' and procedures and enforcing
8 collective bargaining agreements; or establishing or
9 participating in the establishment of performance standards for
10 subordinate teachers and taking corrective measures to implement
11 those standards. Nothing in this chapter is intended to require
12 the exclusion of principals, assistant principals and other
13 supervisory teachers from school system bargaining units which
14 include teachers and nurses in supervisory positions.

15
16 3. Bargaining unit compatibility. The executive director
17 of the board or the director's designee shall decide in each case
18 whether, in order to ensure to teachers the fullest freedom in
19 exercising the rights guaranteed by this chapter and in order to
20 ensure a clear and identifiable community of interest among
21 teachers concerned, the unit appropriate for purposes of
22 collective bargaining with the state board under this chapter
23 shall be the public employer unit determined under section 966 or
24 any subdivision of that unit.

25
26 4. Unit clarification. Where there is a certified or
27 currently recognized bargaining representative and when the
28 circumstances surrounding the formation of an existing bargaining
29 unit are alleged to have changed sufficiently to warrant
30 modification in the composition of that bargaining unit, the
31 state board or any recognized or certified bargaining agent may
32 file a petition for a unit clarification provided that the
33 parties are unable to agree on appropriate modifications and
34 there is no question concerning representation.

35 §999-F. Determination of bargaining agent

36
37 1. Voluntary recognition. Any public teacher organization
38 may file a request with the state board alleging that a majority
39 of teachers in all local bargaining units formed under section
40 966 wish to be represented for the purpose of collective
41 bargaining between the state board and the teachers'
42 organization. This request shall include a demonstration of
43 majority support. The state board shall grant the request for
44 recognition unless the state board desires an election to
45 determine whether the organization represents a majority of the
46 members in the bargaining unit.

47
48 2. Elections. The executive director, or the director's
49 designee, upon signed request of the state board alleging that
50 one or more teachers or teacher organizations have presented to
51 it a claim to be recognized as the representative of teachers, or

1 upon signed petition of at least 30% of all teachers that they
3 desire to be represented by an organization, shall conduct a
5 secret ballot election to determine whether the organization
7 represents a majority of the members in the proposed statewide
9 bargaining unit.

11 The ballot shall contain the name of the organization and that of
13 any other organization showing written proof of at least 10%
15 representation of the teachers within the statewide bargaining
17 unit, together with a choice for any public teacher to designate
19 that the teacher does not desire to be represented by any
21 bargaining agent. When more than one organization is on the
23 ballot and no one of the 3 or more choices receives a majority
25 vote of the teachers voting, a run off election shall be held.
27 The run off ballot shall contain the 2 choices which received the
29 largest and second largest number of votes. When an organization
31 receives the majority of votes of those voting, the executive
33 director of the board shall certify it as the bargaining agent.
35 The bargaining agent certified as representing the bargaining
37 unit shall be recognized by the state board as the sole and
39 exclusive bargaining agent for all of the teachers in the
41 statewide bargaining unit unless a decertification election by
43 secret ballot is held and the bargaining agent is declared by the
45 executive director as not representing a majority of the unit.

47 Whenever 30% of the teachers in the statewide bargaining unit
49 petition for a bargaining agent to be decertified, the procedures
51 for conducting an election on the question are the same as for
53 representation as bargaining agent under this subsection.

55 No question concerning representation may be raised within one
57 year of a certification or attempted certification. Where there
59 is a valid collective bargaining agreement in effect, no question
61 concerning unit or representation may be raised except during the
63 period of not more than 90 nor less than 60 days before the
65 expiration date of the agreement. This time limit does not apply
67 to matters of unit clarification.

69 The bargaining agent certified by the executive director as the
71 exclusive bargaining agent shall represent all the teachers
73 within the unit without regard to membership in the organization
75 certified as bargaining agent, provided that any teacher at any
77 time may present a grievance to the state board and have that
79 grievance adjusted without the intervention of the bargaining
81 agent, if the adjustment is not inconsistent with the terms of a
83 collective bargaining agreement then in effect and if the
85 bargaining agent's representative has been given reasonable
87 opportunity to be present at any meeting of the parties called
89 for the resolution of the grievance.

91 3. Bargaining agent to bargain locally. The bargaining
93 agent selected to represent the statewide teacher bargaining unit

1 under this section shall also represent local bargaining units
3 under chapter 9-A on all issues not within the scope of
bargaining under this chapter.

5 §999-G. Maine Labor Relations Board; powers and duties

7 1. Rule-making power. The Maine Labor Relations Board
9 shall, upon its own initiative or upon request, issue rules
11 interpreting this chapter. These rules are advisory only and are
not binding upon any court. The interpretative rules must be in
writing and available to any person interested in the rules.

13 2. Review of representative proceedings. Any party
15 aggrieved by any ruling or determination of the executive
17 director, or the director's designee, under sections 999-E and
19 999-F may appeal to the Maine Labor Relations Board within 15
days of the announcement of the ruling or determination, except
that, in the instance of objections to the conduct of an election
or challenged ballots, the time period is 5 working days.

21 Upon receipt of an appeal, the board shall within a reasonable
23 time hold a hearing having first given 7 days' notice in writing
25 of the time and place of the hearing to the aggrieved party, the
27 labor organizations or bargaining agent and the state board.
29 These hearings shall be conducted in the manner provided in
31 subsection 3, paragraph B. Within a reasonable time after the
33 conclusion of any hearing, the board shall make a written
35 decision which includes findings of fact and shall either affirm
or modify the ruling or determination of the executive director
and specify the reasons for that action. A copy of the decision
shall be mailed to the labor organization or bargaining agent or
its attorney or other designated representative and the state
board. Decisions of the board made under this subsection are
subject to review by the Superior Court in the manner specified
in section 999-K.

37 3. Prevention of prohibited acts. This subsection governs
39 the board's enforcement of this chapter.

41 A. The board may, as provided, prevent any person, the
43 state board, any teacher, any teacher organization or any
45 bargaining agent from engaging in any of the prohibited acts
described in section 999-C. This power is not affected by
any other means of adjustment or prevention that has been or
may be established by agreement, law or otherwise.

47 B. The state board, any teacher, any teacher organization
49 or any bargaining agent which believes that any person, the
51 state board, any teacher, any teacher organization or any
bargaining agent has engaged in or is engaging in any
prohibited practice may file a complaint with the executive

1 director stating the charges. No such complaint may be
2 filed with the executive director until the complaining
3 party has served a copy of the complaint upon the party
4 complained of. Upon receipt of the complaint, the executive
5 director or the director's designee shall review the charge
6 to determine whether the facts as alleged may constitute a
7 prohibited act. If it is determined that the facts do not,
8 as a matter of law, constitute a violation, the executive
9 director shall dismiss the charge, subject to review by the
10 board. If a formal hearing is considered necessary by the
11 executive director or by the board, the executive director
12 shall serve upon the parties to the complaint a notice of
13 the prehearing conference and of the hearing before the
14 board. The notice shall designate the time and place of
15 hearing for the prehearing conference or the hearing, as
16 appropriate, provided that no hearing may be held based upon
17 any alleged prohibited practice occurring more than 6 months
18 before the complaint is filed with the executive director.
19 The party complained of has the right to file a written
20 answer to the complaint and to appear in person or otherwise
21 and give testimony at the place and time fixed for the
22 hearing. In the discretion of the board, any other person
23 or organization may be allowed to intervene in the
24 proceeding and to present testimony. Nothing in this
25 paragraph restricts the right of the board to require the
26 executive director or the director's designee to hold a
27 prehearing conference on any prohibited practice complaint
28 prior to the hearing before the board and taking whatever
29 action, including dismissal, attempting to resolve
30 disagreements between the parties or recommending an order
31 to the board, as considered appropriate, subject to review
32 by the board.

33
34
35 C. After hearing and argument, if, upon a preponderance of
36 the evidence received, the board finds that any party named
37 in the complaint has engaged in or is engaging in any such
38 prohibited practice, then the board shall in writing state
39 its findings of fact and the reasons for its conclusions and
40 shall issue and cause to be served upon that party an order
41 requiring the party to cease and desist from the prohibited
42 practice and to take such affirmative action, including
43 reinstatement of teachers with or without back pay, as will
44 effectuate the policies of this chapter. No order of the
45 board may require the reinstatement of any individual as a
46 teacher who has been suspended or discharged, or the payment
47 to the teacher of any back pay, if that individual was
48 suspended or discharged for cause.

49 After hearing and argument, if, upon a preponderance of the
50 evidence received, the board finds that the party named in
51 the complaint has not engaged or is not engaging in any
52 prohibited practice, then the board shall in writing state

1 its findings of fact and the reasons for its conclusions and
3 shall issue an order dismissing the complaint.

5 D. If that party fails to comply with the order of the
7 board, the party in whose favor the order operates or the
9 board may file a civil action in the Superior Court of
11 Kennebec County, or the county in which the prohibited
13 practice has occurred, to compel compliance with the order
15 of the board. Upon application of any party in interest or
17 the board, the court may grant any temporary relief or
19 restraining order and may impose any terms and conditions
21 that it considers just and proper, provided that the board's
23 decision shall not be stayed except where it is clearly
shown to the satisfaction of the court that substantial and
irreparable injury will be sustained or that there is a
substantial risk of danger to the public health or safety.
In an action to compel compliance, the Superior Court shall
not review the action of the board other than to determine
whether the board has acted in excess of its jurisdiction.
If an action to review the decision of the board is pending
at the time of the commencement of an action for enforcement
under this subsection or is thereafter filed, the 2 actions
shall be consolidated.

25 E. Whenever a complaint is filed with the executive
27 director, alleging that the state board has violated section
29 999-C, subsection 1, paragraph F or alleging that a teacher
31 or teacher organization or bargaining agent has violated
33 section 999-C, subsection 2, paragraph C, the party making
the complaint may simultaneously seek injunctive relief from
the Superior Court in the county in which the prohibited
practice is alleged to have occurred pending the final
adjudication of the board with respect to that matter.

35 F. Either party may seek a review by the Superior Court of
37 Kennebec County or of the county in which the prohibited
39 practice is alleged to have occurred of a decision of the
41 Maine Labor Relations Board by filing a complaint in
43 accordance with the Maine Rules of Civil Procedure, Rule
45 80C, provided the complaint is filed within 15 days of the
47 effective date of the decision. Upon the filing of the
49 complaint, the court shall set the complaint for hearing at
51 the earliest possible time and shall cause all interested
parties and the board to be notified. Pending review and
upon application of any party in interest, the court may
grant any temporary relief or restraining order and may
impose any terms and conditions that it considers just and
proper, provided that the board's decision shall not be
stayed except where it is clearly shown to the satisfaction
of the court that substantial and irreparable injury will be
sustained or that there is a substantial risk of danger to
the public health or safety. The executive director shall

1 forthwith file in the court the record in the proceeding
3 certified by the executive director or a member of the
5 board. The record shall include all documents filed in the
7 proceeding and the transcript, if any. After hearing, which
9 shall be held at least 7 days after notice, the court may
11 enforce, modify, enforce as so modified or set aside in
13 whole or in part the decision of the board, except that the
15 findings of the board on questions of fact are final unless
17 shown to be clearly erroneous. Any appeal to the law court
19 shall be the same as an appeal from an interlocutory order
21 under section 6.

13 G. In any judicial proceeding authorized by this subsection
15 in which injunctive relief is sought, sections 5 and 6
17 apply, except that neither an allegation nor proof of
19 unavoidable substantial and irreparable injury to the
21 complainant's property is required to obtain a temporary
23 restraining order or injunction.

25 4. Hearings. The hearings conducted by the board under
27 this section shall be informal and the rules of evidence applied
29 in judicial proceedings are not binding. Any documentary
31 evidence and other evidence considered relevant by the board may
33 be received.

35 The chair of the board may administer oaths and require by
37 subpoena the attendance and testimony of witnesses, the
39 presentation of books, records and other evidence pertinent to
41 the issues presented to the board for determination. Witnesses
43 subpoenaed by the board shall be allowed the same fees as are
45 paid to witnesses in the Superior Court. These fees, together
47 with all necessary expenses of the board, shall be paid by the
49 Treasurer of State on warrants drawn by the State Controller.

35 **§999-H. Municipal personnel board or civil service authority**

37 Nothing in this chapter diminishes the authority of any
39 municipal civil service commission or personnel board or its
41 agents established by law, charter or special act to conduct and
43 grade merit examinations and to rate candidates in the order of
45 their relative excellence from which appointments or promotions
47 may be made to positions in the competitive division of the
49 classified service of the municipal employer served by such a
51 civil service commission or personnel board. The conduct and the
grading of merit examinations, the rating of candidates and the
establishment of lists from these examinations and the
appointments from these lists shall not be subject to collective
bargaining. If a collective bargaining agreement between a
public employer and a bargaining agent contains provisions for
binding arbitration of grievances involving the demotion,
lay-off, reinstatement, suspension, removal, discharge or
discipline of any public teacher, such provisions are controlling

1 if they conflict with any authority, involving these matters, of
3 any such municipal civil service commission or personnel board or
5 its agents.

7 **§999-I. Scope of binding contract arbitration**

9 A collective bargaining agreement between the state board
11 and a bargaining agent may provide for binding arbitration as the
13 final step of a grievance procedure but the only grievances which
15 may be taken to binding arbitration are disputes between the
17 parties as to the meaning or application of the specific terms of
19 the collective bargaining agreement. An arbitrator authorized to
21 make binding decisions under any such provision may not add to,
23 subtract from or modify the collective bargaining agreement.

25 **§999-J. Suits by and against unincorporated teacher organizations**

27 In any judicial proceeding brought under this chapter or to
29 enforce any of the rights guaranteed by this chapter, any
31 unincorporated teacher organization may sue or be sued in the
33 name by which it is known.

35 **§999-K. Review**

37 Either party may seek a review by the Superior Court of a
39 binding determination by an arbitration panel. This review shall
41 be sought in accordance with the Maine Rules of Civil Procedure,
43 Rule 80-C.

45 The binding determination of an arbitration panel or
47 arbitrator, in the absence of fraud, upon all questions of fact
49 is final. The court may, after consideration, affirm, reverse or
51 modify any such binding determination or decision based upon an
erroneous ruling or finding of law. An appeal may be taken to
the law court as in any civil action.

§999-L. Publication of initial proposals

Either party to negotiations may publicize the parties'
written initial collective bargaining proposals. No proposal may
be publicized until 10 days after both parties have made their
initial proposal.

§999-M. Teachers not state employees

Nothing in this chapter may be construed to change the
employment relationship between teachers and their local public
employers, as defined in section 962. The State is not the
employer of any such teacher for any purpose.

Sec. 13. 36 MRS §5111-B is enacted to read:

1 **§5111-B. Supplemental charge**

3 In addition to the tax imposed by section 5111 or 5111-A,
5 every individual taxpayer shall pay an amount equal to 29% of the
7 taxes due the State for any tax year beginning on or after
9 January 1, 1990.

11 **Sec. 14. 36 MRSA §5200, 2nd ¶**, as enacted by PL 1985, c. 675,
13 **§§1 and 5, is amended to read:**

15 In the case of an affiliated group of corporations engaged
17 in a unitary business, the respective preferential rates provided
19 in this section shall be applied only to the first \$250,000 of
21 Maine net income of the entire group and shall be apportioned
23 equally among the taxable corporations unless those taxable
25 corporations jointly elect a different apportionment. The
27 balance of the Maine net income of the entire group shall be
29 taxed at 8.93%. In addition to the tax imposed by this section,
31 every corporate taxpayer shall pay an amount equal to 29% of the
33 taxes due the State for any tax year beginning on or after
35 January 1, 1990.

37 **Sec. 15. Transition.** The following provisions govern the
39 transition to statewide collective bargaining for teachers under
41 this Act.

43 1. **Compensation and benefits not to be reduced.** No teacher
45 may receive less compensation and benefits under any contract
47 negotiated under this Act than that teacher had received under
49 the contract in effect immediately before the contract negotiated
51 under this Act. This provision does not prevent any local school
 district from reassigning teachers to a lower-paying position nor
 does it prevent a decrease in compensation or benefits as a
 result of employment disciplinary measures, teacher sabbaticals,
 or any other reason unrelated to the specific terms of the
 contract negotiated under this Act. This provision does not
 require the State Board of Education to negotiate a contract
 which provides that all similarly qualified teachers in the State
 receive the same compensation and benefits, which may not be
 lower than the highest amounts in any existing local contract.
 The state board and the teachers, or their bargaining agent
 selected under this Act, may negotiate terms of a collective
 bargaining agreement that recognizes regional or other
 differences in compensation and benefits.

53 2. **Existing collective bargaining agreements.** All
55 contracts negotiated under the Maine Revised Statutes, Title 26,
57 chapter 9-A, with bargaining units composed of teachers shall be
59 honored to their expiration dates, with all costs of compensation
61 and benefits due under those contracts to be paid by the local
 employer as provided prior to this Act, unless otherwise mutually
 agreed to by the state board and the teachers or their bargaining

1 agent selected under this Act. The state board and the teachers,
2 or their bargaining agent selected under this Act, shall
3 negotiate terms regarding the manner of implementing this Act,
4 which may include the negotiation of interim collective
5 bargaining agreements so that all local contracts will expire on
6 the same date in the future. Notwithstanding any other provision
7 of law, no collective bargaining agreement which extends beyond
8 July 1, 1991, may be negotiated under the Maine Revised Statutes,
9 Title 26, chapter 9-A, after the effective date of this section.

11 **3. Unit clarification proceedings.** Before a bargaining
12 agent for teachers is selected under this Act, the Executive
13 Director of the Maine Labor Relations Board shall identify all
14 existing local bargaining units which include teachers as defined
15 in this Act. The executive director shall further identify those
16 existing local bargaining units which do not comply with this Act
17 and shall notify the unit's current bargaining agent and the
18 state board of that fact. The executive director shall follow
19 the unit clarification proceedings of this Act to form bargaining
20 units in compliance with this Act before the statewide bargaining
21 agent is selected. The executive director shall adopt rules,
22 subject to Title 5, chapter 375, establishing procedures for
23 these unit clarification proceedings. The current bargaining
24 agent for that unit and the State may intervene and present
25 evidence to the executive director in these proceedings.

27 **Sec. 16. Effective date.** This Act takes effect on April 1,
28 1991, except that sections 13 and 14 of this Act take effect on
29 January 1, 1990.

31

STATEMENT OF FACT

33

34 This bill provides for the State to pay 100% of teacher
35 wages, salaries, pensions and insurance benefits as a means of
36 increasing the State's share of educational costs and of
37 relieving the local property tax burden. To accomplish that end
38 the bill calls for a statewide collective bargaining agreement
39 covering teacher compensation and benefits.

41 The bill establishes the teachers labor relations law
42 governing the determination of a teacher bargaining unit, the
43 selection of a bargaining agent for teachers and the bargaining
44 process. The State Board of Education will bargain for the State.

45

46 Under a statewide teacher contract negotiated as provided in
47 this bill, no teacher would receive less in compensation and
48 benefits than was received under the last contract. The
49 collective bargaining agreement may recognize regional or other
50 differences in compensation and benefits.

51

1 The bill also amends the School Finance Act of 1985 to
2 provide for state payment of all the costs of teacher
3 compensation and benefits. Finally, the bill adds a surcharge to
4 the personnel and corporate income taxes to raise the funds
5 necessary to pay the additional state costs which will be
6 incurred.