

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 350

H.P. 259

House of Representatives, February 5, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative NADEAU of Saco.

Cosponsored by Representative HANDY of Lewiston and Representative PINEAU of Jay.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Concerning Teacher Collective Bargaining Agreements.



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

2
4 Sec. 1. 26 MRSA §962, sub-§§4-C and 8 are enacted to read:

6 4-C. Economic issue. "Economic issue" means an issue that
concerns wages, pensions or insurance.

8 8. Public school employee. "Public school employee" means
an employee of any public school.

10 Sec. 2. 26 MRSA §965, sub-§4, as amended by PL 1975, c. 564,
12 §18, is further amended by amending the first paragraph to read:

14 4. Arbitration; generally. This subsection applies to all
16 arbitration proceedings under this chapter except those described
in subsection 4-A. In addition to the 30-day period referred to
18 in subsection 3, the parties shall have 15 more days, making a
total period of 45 days from the submission of findings and
20 recommendations, in which to make a good faith effort to resolve
their controversy.

22 Sec. 3. 26 MRSA §965, sub-§4-A is enacted to read:

24 4-A. Arbitration; public school employees. Notwithstanding
26 any other law, the following procedure is established to resolve
collective bargaining disputes involving public school employees
28 under this chapter. In addition to the 30-day period referred to
in subsection 3, the parties have 15 more days, making a total
30 period of 45 days from the submission of findings and
recommendations, in which to make a good faith effort to resolve
32 their controversy.

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

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

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

2 (2) Within 10 days after receiving the request, the
3 executive director shall select a neutral arbitrator
4 from the list of neutral fact finders. The executive
5 director shall promptly notify each party in writing of
6 the name and address of the arbitrator selected. The
7 neutral arbitrator may neither be the person selected
8 as mediator under subsection 2 nor any member of the
9 fact-finding board selected under subsection 3 without
10 the consent of both parties. The neutral arbitrator
11 selected by the executive director shall serve as chair
12 of the arbitration panel.

13 B. As soon as possible after the neutral arbitrator is
14 selected, the arbitration panel shall meet with the parties
15 or their representatives, or both, either jointly or
16 separately, make inquiries and investigations, hold hearings
17 or take any other steps that the arbitrators consider
18 appropriate.

19 (1) The arbitration proceeding must be conducted in
20 accordance with rules and procedures adopted by the
21 board and must closely follow the rules and procedures
22 of the American Arbitration Association.

23 (2) The hearings are informal and the rules of
24 evidence applicable to judicial proceedings are not
25 binding. All documentary evidence and other data
26 considered relevant by the arbitrators may be received
27 in evidence.

28 (3) The arbitrators may administer oaths and require
29 by subpoena the attendance and testimony of witnesses
30 and the production of books, records and other evidence
31 relevant to the issues presented to them for
32 determination.

33 C. At least 7 days before the arbitration hearing, the
34 neutral arbitrator shall notify the employer, the bargaining
35 agent and the executive director of the time and place of
36 the hearing. If the controversy is not resolved by the
37 parties, the arbitration proceeds as follows.

38 (1) At least 2 days before the hearing begins, each
39 party shall file with the executive director and the
40 arbitration panel, and deliver to the other party, a
41 proposed collective bargaining agreement, in numbered
42 paragraphs, that the party is willing to execute. The
43 cost data for all provisions must accompany each
44 proposed agreement.

45

2 (2) At the commencement of the hearing, each party
3 shall file with the arbitration panel a reply setting
4 forth:

5 (a) Those paragraphs of the agreement proposed by
6 the other party that are acceptable; and

7 (b) Those paragraphs of the proposed agreement
8 that are not acceptable, together with any
9 alternative contract language that party would
10 accept in place of those paragraphs.

11 (3) Within 5 days after the conclusion of taking
12 testimony, the parties may file jointly with the
13 arbitration panel stipulations setting forth agreement
14 provisions that both parties have agreed to accept.

15 (4) Within 10 days after testimony is concluded, the
16 arbitration panel shall forward to each party and to
17 the executive director an arbitration statement setting
18 forth the replies and stipulations filed by the parties
19 and stating in numbered paragraphs:

20 (a) All provisions in the proposed agreements
21 that are agreed to by both parties;

22 (b) Those issues that are resolved; and

23 (c) All of the unresolved items and identifying
24 which of those items are economic issues.

25 The determination of the majority of arbitrators is
26 conclusive as to the issues in dispute and which issues
27 are economic.

28 (5) Within 5 days after receiving the arbitration
29 statement, each party shall file a statement of last
30 best offer with the arbitration panel and send a copy
31 to the opposing party. The statement of last best
32 offer must set forth, in numbered paragraphs
33 corresponding to the statement of unresolved issues
34 contained in the arbitration statement, the final
35 agreement proposed by that party.

36 D. Within 20 days after the last day for filing the
37 statements of last best offer, the arbitration panel shall
38 issue a decision on each unresolved issue set forth in the
39 arbitration statement. A copy of the decision must be
40 immediately distributed to each party and to the executive
41 director. The arbitration panel shall treat each unresolved
42 issue set forth in the arbitration statement as a separate
43 question. In deciding each issue, a majority of arbitrators

2 shall accept the final provision relating to that unresolved
4 issue as contained in the statement of last best offer of
6 one party or the other party. These decisions are subject
8 to review by the Superior Court in the manner specified by
10 section 972.

12 In reaching a decision under this paragraph, the arbitration
14 panel shall consider the following factors:

16 (1) The negotiations between the parties before
18 arbitration;

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

26 (3) Changes in the cost of living;

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

32 (5) Comparison of the wages, hours and working
34 conditions, including, but not limited to, hazards of
36 the job, of the employees involved in the arbitration
38 proceeding with the wages, hours and working conditions
40 of other employees performing similar services in
42 public and private employment in other jurisdictions
44 competing in the same labor market;

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

(7) Any other factors not confined to this subsection
that are normally and traditionally taken into
consideration in the determination of wages, hours and
working conditions through voluntary collective
bargaining, mediation, fact finding, arbitration or
otherwise between the parties in the public service or
in private employment, including wage and price
statistics compiled by State Government or Federal
Government;

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

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

2 (10) The need to maintain appropriate relationships
3 between different occupations in the governmental unit;
4 and

6 (11) The need to establish fair and reasonable
7 conditions in relation to job qualifications and
8 responsibilities.

10 E. Within 10 days after the arbitrators' decision is
11 issued, the parties shall sign an agreement binding each
12 party to the decision unless, within that 10-day period, the
13 parties agree to a different agreement and execute that
14 agreement in the form of a binding contract. When the final
15 contract differs from the arbitrators' decision, a copy of
16 the contract must be forwarded to the executive director.
17 The results of all arbitration proceedings, recommendations
18 and awards conducted under this section must be filed with
19 the board at the executive director's office simultaneously
20 with the submission of the award to the parties. If the
21 parties settle their dispute during the arbitration
22 proceeding, the chair of the arbitration panel shall submit
23 a report of the panel's activities to the executive director
24 within 5 days after the arbitration proceeding has
25 terminated.

26 F. Nothing in this subsection restricts the right of public
27 employees and their employers to arbitrate issues that arise
28 under a contract.

30

32 STATEMENT OF FACT

34 When the Legislature gave municipal employees the right to
35 organize and bargain collectively, it specifically denied those
36 same employees the right to strike. In place of the right to
37 strike as a means of encouraging dispute resolutions, the law
38 established a 3-step process of dispute resolution consisting of
39 mediation, fact finding and arbitration. Arbitration currently
40 is not binding on wages, pensions and insurance which are defined
41 as economic issues in this bill. This bill includes those issues
42 within the scope of binding arbitration under the municipal
43 public employees labor relations laws for all bargaining disputes
44 involving public school employees. The method of resolving
45 bargaining disputes involving other municipal employees is not
46 affected by this bill.

48 There are several safeguards built into the bill to ensure
49 that binding arbitration will be used only as a final resort and
50 not the standard means of contract resolution. The bill
51 authorizes arbitration to begin only after fact finding, and
52 allows 45 additional days to come to an agreement. The means of

2 arbitration is so-called "issue-by-issue last best offer," which
3 is what labor law experts believe to create the greatest
4 incentive to both parties to come to an agreement and not resort
5 to arbitration. Each party, labor and management, must submit a
6 list of proposed contract provisions in separate numbered
7 paragraphs before arbitration begins. Each party then selects
8 those contract items submitted by the opposing party with which
9 they can reach agreement without arbitration. Only those items
10 that are not agreed to are subject to arbitration. This process
11 encourages the parties to reach a negotiated settlement on each
12 issue before arbitration begins.

13
14 After the issues subject to arbitration are identified, each
15 party must file a final "last best offer" on each unresolved item
16 along with any necessary cost data relating to that item. The
17 arbitration panel must then select one or the other "last best
18 offer" of the parties on each disputed issue; the panel may not
19 choose a resolution of a disputed issue other than as offered by
20 one or the other party. This process is designed to force the
21 parties to make reasonable "last best offers," since they know
22 that if their offer is too extravagant the arbitrators are likely
23 to choose the opposing party's offer. This process also
24 encourages negotiated settlements of disputed items since the
25 parties would presumably prefer to retain control over the final
26 decisions on disputed issues. In other words, they stand to lose
27 completely to the opposing party if the issue goes to
28 arbitration, whereas, if they negotiate a settlement, they can
29 exert greater control over the issues important to them.

30 The bill provides a final opportunity for the parties to
31 negotiate a settlement within 10 days after the arbitrators'
32 decision is issued. If the parties fail to agree to a negotiated
33 settlement within this period, the arbitrators' rulings are
34 binding on both parties for all issues submitted to arbitration.

35 The discretion of arbitrators in making their decisions
36 under the bill is limited by the adoption of 11 specific criteria
37 that the arbitrators must consider. These criteria are adopted
38 to ensure that the legislative policy to achieve fair and
39 reasonable collective bargaining contracts is implemented by the
40 arbitrators. For example, one of the criteria that the
41 arbitrators must consider is the ability of the local
42 governmental unit to pay for a cost item in the proposed
43 contract. This requirement ensures that arbitrators are not free
44 to grant overly expensive requests made by employees. The final
45 protection to ensure that this legislative policy is achieved is
46 added in the bill by ensuring that all arbitrators' decisions are
47 subject to judicial review to prevent abuse of the arbitration
48 system.

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