

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1322

H.P. 925

House of Representatives, March 27, 1991

Submitted by the Department of Labor pursuant to Joint Rule 24.
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 HASTINGS of Fryeburg.

Cosponsored by Senator GAUVREAU of Androscoggin and Senator CONLEY of Cumberland.

STATE OF MAINE

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

**An Act to Clarify Appellate Procedures under the Public Sector Labor
Laws.**



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

2
3 Sec. 1. 26 MRSA §968, sub-§4, as amended by PL 1975, c. 697,
4 §3, is further amended to read:

6 4. Review of representative proceedings. Any party
7 aggrieved by any ruling or determination of the executive
8 director, or his the executive director's designee, under
9 sections 966 and 967 may appeal, within 15 days of the
10 announcement of the ruling or determination, except that in the
11 instance of objections to the conduct of an election or
12 challenged ballots the time period shall ~~be~~ is 5 working days, to
13 the Maine Labor Relations Board.

14
15 Upon receipt of such an appeal, the board shall within a
16 reasonable time hold a hearing having first caused 7 days notice
17 in writing of the time and place of such hearing to be given to
18 the aggrieved party, the labor organizations or bargaining agent
19 and the public employer. Such These hearings shall must be
20 conducted in the manner provided in subsection 5, paragraph B.
21 Within a reasonable time after the conclusion of any hearing the
22 board shall make a written decision ~~which shall~~ that must include
23 findings of fact and shall either affirm or modify the ruling or
24 determination of the executive director and specify the reasons
25 for such that action. A copy of such that decision shall must be
26 mailed to the labor organization or bargaining agent or its
27 attorney or other designated representative and the public
28 employer. Decisions of the board made pursuant to this subsection
29 shall ~~be~~ are subject to review by the Superior Court in the
30 manner specified in section 972, provided the complaint is filed
31 within 15 days of the date of issuance of the decision.

32
33 Sec. 2. 26 MRSA §968, sub-§5, ¶F, as amended by PL 1977, c.
34 479, §7, is further amended to read:

35
36 F. Either party may seek a review by the Superior Court of
37 Kennebec County or of the county in which the prohibited
38 practice is alleged to have occurred of a decision or order
39 of the Maine Labor Relations Board by filing a complaint in
40 accordance with the Maine Rules of Civil Procedure, Rule 80B
41 80C, provided the complaint shall ~~be~~ is filed within 15 days
42 of the effective date of issuance of the decision. Upon the
43 filing of the complaint, the court shall set the complaint
44 down for hearing at the earliest possible time and shall
45 cause all interested parties and the board to be notified.
46 Pending review and upon application of any party in
47 interest, the court may grant such temporary relief or
48 restraining order and may impose such terms and conditions
49 as it deems just and proper; provided that the board's
50 decision shall is not be stayed except where when it is
51 clearly shown to the satisfaction of the court that
52 substantial and irreparable injury shall will be sustained

2 or that there is a substantial risk of danger to the public
4 health or safety. The executive director shall forthwith
6 file in the court the record in the proceeding certified by
8 the executive director or a member of the board. The record
10 shall ~~must~~ include all documents filed in the proceeding and
12 the transcript, if any. After hearing, ~~which shall~~ that must
14 be held not less than 7 days after notice thereof, the court
16 may enforce, modify, enforce as so modified or set aside in
18 whole or in part the decision of the board, except that the
20 findings of the board on questions of fact ~~shall be~~ are
22 final unless shown to be clearly erroneous. Any appeal to
24 the ~~law court shall~~ Law Court must be the same as an appeal
from an interlocutory order under section 6.

14 **Sec. 3. 26 MRSA §972, first ¶**, as amended by PL 1971, c. 609,
16 **§11**, is further amended to read:

18 Either party may seek a review by the Superior Court of a
20 binding determination by an arbitration panel. Sueh For interest
22 arbitrations, the review shall ~~must~~ be sought in accordance with
24 Rule-80-B-of the Maine Rules of Civil Procedure, Rule 80C.

24 **Sec. 4. 26 MRSA §979-G, sub-§2**, as amended by PL 1975, c. 697,
26 **§10**, is further amended to read:

26 **2. Review of representation proceedings.** Any person
28 aggrieved by any ruling or determination of the executive
30 director under sections 979-E and 979-F may appeal, within 15
32 days of the announcement of the ruling or determination, except
34 that in the instance of objections to the conduct of an election
36 or challenged ballots the time period ~~shall be~~ is 5 working days,
38 to the Maine Labor Relations Board. Upon receipt of such an
40 appeal, the board shall, within a reasonable time, hold a
42 hearing, having first caused 7 days' notice in writing of the
time and place of such hearing to be given to the aggrieved
party, the labor organizations or bargaining agent and the public
employer. Such hearings and the procedures established in
furtherance thereof shall ~~must~~ be in accordance with section 968.
Decisions of the board made pursuant to this subsection shall ~~be~~
are subject to review by the Superior Court in the manner
specified in section 972, provided the complaint is filed within
15 days of the issuance of the decision.

44 **Sec. 5. 26 MRSA §979-H, sub-§7**, as amended by PL 1975, c. 697,
46 **§12**, is further amended to read:

48 **7. Court review.** Either party may seek a review by the
50 Superior Court in Kennebec County of a decision or order of the
52 Maine Labor Relations Board by filing a complaint in accordance
with Rule 80B 80C of the Maine Rules of Civil Procedure, provided
the complaint ~~shall be~~ is filed within 15 days of the effective
date of issuance of the decision. Upon the filing of

2 the complaint, the court shall set the complaint down for hearing
at the earliest possible time and shall cause all interested
4 parties and the board to be notified. Pending review and upon
application of any party in interest, the court may grant such
6 temporary relief or restraining order and may impose such terms
and conditions as it deems just and proper; provided that the
8 board's decision or order shall ~~is~~ not be stayed, except where
when it is clearly shown to the satisfaction of the court that
substantial and irreparable injury will be sustained or that
10 there is a substantial risk of danger to the public health or
safety. The executive director shall forthwith file in the court
12 the record in the proceeding certified by the executive director
or a member of the board. The record shall must include all
14 documents filed in the proceeding and the transcript, if any.
After hearing, ~~which shall~~ that must be held not less than 7 days
16 after notice thereof, the court may enforce, modify, enforce as
so modified or set aside in whole or in part the decision of the
18 board, except that the finding of the board on questions of fact
~~shall-be~~ are final unless shown to be clearly erroneous. Any
20 appeal to the ~~law court shall~~ Law Court must be the same as an
appeal from an interlocutory order under section 6.

22 **Sec. 6. 26 MRSA §1028, sub-§2, as amended by PL 1975, c. 770,**
24 **§115, is further amended to read:**

26 **2. Review of representation proceedings.** Any person
aggrieved by any ruling or determination of the executive
28 director under sections 1024 and 1025 may appeal, within 15 days
of the announcement of the ruling or determination, except that
30 in the instance of objections to the conduct of an election or
challenged ballots the time period shall ~~be~~ is 5 working days, to
32 the Maine Labor Relations Board. Upon receipt of such an appeal,
the board shall within a reasonable time, hold a hearing, having
34 first caused 7 days' notice, in writing, of the time and place of
such hearings to be given to the aggrieved party, the labor
36 organizations or bargaining agent and the public employer. Such
hearings and the procedures established in furtherance thereof
38 shall must be in accordance with section 968. Decisions of the
board made pursuant to this subsection shall ~~be~~ are subject to
40 review by the Superior Court in the manner specified in section
972, provided the complaint is filed within 15 days of the date
42 of issuance of the decision.

44 **Sec. 7. 26 MRSA §1029, sub-§7, as enacted by PL 1979, c. 541,**
46 **Pt. A, §173, is amended to read:**

48 **7. Court review.** Either party may seek a review by the
Superior Court in Kennebec County of a decision or order of the
Maine Labor Relations Board by filing a complaint in accordance
50 with the Maine Rules of Civil Procedure, Rule 80B 80C, provided
the complaint shall ~~be~~ is filed within 15 days of the effective
52 date of issuance of the decision. Upon the filing of the

2 complaint, the court shall set the complaint down for hearing at
3 the earliest possible time and shall cause all interested parties
4 and the board to be notified. Pending review and upon application
5 of any part in interest, the court may grant such temporary
6 relief or restraining order and may impose such terms and
7 conditions as it deems just and proper; provided that the board's
8 decision or order shall ~~is~~ not be stayed, except where when it is
9 clearly shown to the satisfaction of the court that substantial
10 and irreparable injury will be sustained. The executive director
11 shall forthwith file in the court the record in the proceeding
12 certified by the executive director or a member of the board. The
13 record shall ~~must~~ include all documents filed in the proceeding
14 and the transcript, if any. After hearing, ~~which shall~~ that must
15 be held not less than 7 days after notice thereof, the court may
16 enforce, modify, enforce as so modified, or set aside in whole or
17 in part the decision of the board, except that the finding of the
18 board on questions of fact shall ~~be~~ are final unless shown to be
19 clearly erroneous. Any appeal to the ~~law court shall~~ Law Court
20 must be the same as an appeal from an interlocutory order under
subsection 6.

22 **Sec. 8. 26 MRSA §1288, sub-§2**, as enacted by PL 1983, c. 702,
23 is amended to read:

24 **2. Review of representation proceedings.** Any person
25 aggrieved by any ruling or determination of the executive
26 director under sections 1286 and 1287 may appeal, within 15 days
27 of the announcement of the ruling or determination, except that
28 in the instance of objections to the conduct of an election or
29 challenged ballots the time period shall ~~be~~ is 5 working days, to
30 the Maine Labor Relations Board. Upon receipt of such an appeal,
31 the board shall, within a reasonable time, hold a hearing, having
32 first caused 7 days' notice in writing of the time and place of
33 that hearing to be given to the aggrieved party, the labor
34 organizations or bargaining agent and the public employer. The
35 hearings and the procedures established in furtherance thereof
36 shall ~~must~~ be in accordance with section 968. Decisions of the
37 board made pursuant to this subsection shall ~~be~~ are subject to
38 review by the Superior Court in the manner specified in section
39 1292, provided the complaint is filed within 15 days of the date
40 of issuance of the decision.

42 **Sec. 9. 26 MRSA §1289, sub-§7**, as enacted by PL 1983, c. 702,
43 is amended to read:

44 **7. Court review.** Either party may seek a review by the
45 Superior Court in Kennebec County of a decision or order of the
46 Maine Labor Relations Board by filing a complaint in accordance
47 with the Maine Rules of Civil Procedure, Rule 80C 80C, provided
48 that the complaint shall ~~must~~ be filed within 15 days of the
49 effective date of issuance of the decision. Upon the filing of
50 the complaint, the court shall set the complaint down for hearing
51
52

2 at the earliest possible time and shall cause all interested
parties and the board to be notified. Pending review and upon
4 application of any party in interest, the court may grant such
temporary relief or restraining order and may impose such terms
6 and conditions as it deems just and proper; provided that the
board's decision or order shall is not be stayed, except where
8 when it is clearly shown to the satisfaction of the court that
substantial and irreparable injury will be sustained or that
10 there is a substantial risk of danger to the public health,
safety or welfare or interference with the exercise of the
12 judicial power. The executive director shall forthwith file in
the court the record in the proceeding certified by the executive
14 director or a member of the board. The record shall must include
all documents filed in the proceeding and the transcript, if
16 any. After hearing, ~~which shall~~ that must be held not less than
7 days after notice thereof, the court may enforce, modify,
18 enforce as so modified or set aside in whole or in part the
decision of the board, except that the finding of the board on
20 questions of fact shall must be final unless shown to be clearly
erroneous. Any appeal to the Law Court shall must be expedited
22 in the same manner as an appeal from an interlocutory order under
section 6.

24 **Sec. 10. 26 MRSA §1292, sub-§1, as enacted by PL 1983, c. 702,**
is amended to read:

26
28 **1. Review by Superior Court.** Either party may seek a
review by the Superior Court of a binding determination by an
30 arbitration panel. The For interest arbitrations, the review
shall must be sought in accordance with the Maine Rules of Civil
32 Procedure, Rule 80C.

34 STATEMENT OF FACT

36
38 There has been substantial confusion regarding appellate
procedures under the public sector labor laws. This bill
40 accomplishes the following.

42 1. In 1983, the Maine Rules of Civil Procedure, Rule 80C
was promulgated to establish procedures for Superior Court review
44 of final agency actions pursuant to the Maine Administrative
Procedures Act. Three of the public sector labor laws still
46 provide that appeals are to proceed under Rule 80B, because they
were promulgated prior to 1983.

48 2. There has been some confusion as to the meaning of
50 effective date in the 15-day time limit for filing for Superior
Court review of the prohibited practice decisions of the Maine
Labor Relations Board. The laws are amended to require filing of

2 those appeals within 15 days of the issuance date, which is
recorded on every decision.

4 3. The board has been mistakenly applying a 15-day filing
6 rule for Superior Court appeals of board decisions in unit
8 matters. Rule 80C provides that parties have 30 days to appeal
10 those decisions. Since employees are most vulnerable to pressure
12 between the time a unit is established and a bargaining agent
election is held, appeals of unit decisions to Superior Court
14 should proceed as quickly as possible. Consequently, all of the
public sector labor laws are amended to be consistent with the
filing period for appeal of board prohibited practice decisions,
which is 15 days.

16 4. On several occasions, parties have erroneously assumed
18 that the appellate procedures of the Maine Revised Statutes,
Title 26, section 972, apply to grievance arbitrations as well as
interest arbitrations. The 4 laws are amended to clarify that
that is not the case.