

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

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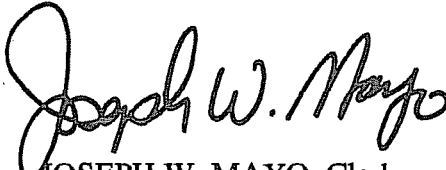
H.P. 459

House of Representatives, February 22, 1993

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

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Submitted by the Department of Labor pursuant to Joint Rule 24.  
Reference to the Committee on Labor suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative LIBBY of Buxton.  
Cosponsored by Representatives: AIKMAN of Poland, RUHLIN of Brewer, Senator: HANDY  
of Androscoggin.

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

2  
4       Sec. 1. 26 MRSA §968, sub-§4, as amended by PL 1991, c. 143,  
§1, is further amended to read:

6       4. Review of representative proceedings. Any party  
8 aggrieved by any ruling or determination of the executive  
director, or the executive director's designee, under sections  
10 966 and 967 may appeal, within 15 days of the announcement of the  
12 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, to the Maine Labor Relations  
Board.

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16       Upon receipt of such an appeal, the board shall within a  
reasonable time hold a hearing having first caused 7 days notice  
18 in writing of the time and place of such the hearing to be given  
to the aggrieved party, the labor organizations or bargaining  
agent and the public employer. These hearings must be conducted  
20 in the manner provided in subsection 5, paragraph B. Within a  
reasonable time after the conclusion of any hearing the board  
22 shall make a written decision that must include findings of fact  
and either affirm or modify the ruling or determination of the  
24 executive director and specify the reasons for that action. A  
copy of that decision must be mailed to the labor organization or  
26 bargaining agent or its attorney or other designated  
representative and the public employer. Decisions of the board  
28 made pursuant to this subsection are subject to review by the  
Superior Court under the Maine Rules of Civil Procedure, Rule  
30 80C, in the manner accordance with the standards specified in  
section 972, provided the complaint is filed within 15 days of  
32 the date of issuance of the decision. The complaint must be  
served upon the board and all parties to the board proceeding by  
34 certified mail, return receipt requested.

36       Sec. 2. 26 MRSA §968, sub-§5, ¶F, as amended by PL 1991, c.  
143, §2, is further amended to read:

38  
40       F. Either party may seek a review by the Superior Court of  
Kennebec County or of the county in which the prohibited  
42 practice is alleged to have occurred of a decision or order  
of the Maine Labor Relations Board by filing a complaint in  
accordance with the Maine Rules of Civil Procedure, Rule  
44 80C, provided if the complaint is filed within 15 days of  
the date of issuance of the decision. The complaint must be  
46 served upon the board and all parties to the board  
proceeding by certified mail, return receipt requested.  
48       Upon the filing of the complaint, the court shall set the  
complaint down for hearing at the earliest possible time and  
50 shall cause all interested parties and the board to be  
notified. Pending review and upon application of any party  
52 in interest, the court may grant such temporary relief or

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

20 **Sec. 3. 26 MRSA §972, first ¶;** as amended by PL 1991, c. 143,  
§3, is further amended to read:

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

28 **Sec. 4. 26 MRSA §979-G,** as amended by PL 1991, c 143, §4, is  
further amended to read:

30 **§979-G. Rule-making procedure and review of proceedings**

32 **1. Rule-making procedure.** Proceedings conducted under this  
34 chapter ~~shall-be~~ are subject to the rules and procedures of the  
board promulgated under section 968, subsection 3.

36 **2. Review of representation proceedings.** Any person  
38 aggrieved by any ruling or determination of the executive  
40 director under sections 979-E and 979-F may appeal, within 15  
42 days of the announcement of the ruling or determination, except  
44 that in the instance of objections to the conduct of an election  
46 or challenged ballots the time period is 5 working days, to the  
Maine Labor Relations Board. Upon receipt of such an appeal, the  
board shall, within a reasonable time, hold a 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  
48 The hearings and the procedures established in furtherance  
thereof must be in accordance with section 968. Decisions of the  
board made pursuant to this subsection are subject to review by  
50 the Superior Court under the Maine Rules of Civil Procedure, Rule  
80C, ~~in the-manner~~ accordance with the standards specified in  
52 section 972, provided if the complaint is filed within 15 days of

2 the issuance of the decision. The complaint must be served upon  
3 the board and all parties to the board proceeding by certified  
4 mail, return receipt requested.

5 **Sec. 5. 26 MRSA §979-H, sub-§7,** as amended by PL 1991, c. 143,  
6 §5, is further amended to read:

7 **7. Court review.** Either party may seek a review by the  
8 Superior Court in Kennebec County of a decision or order of the  
9 Maine Labor Relations Board by filing a complaint in accordance  
10 with ~~Rule--80C--of~~ the Maine Rules of Civil Procedure, Rule 80C,  
11 provided the complaint is filed within 15 days of the date of  
12 issuance of the decision. The complaint must be served upon the  
13 board and all parties to the board proceeding by certified mail,  
14 return receipt requested. Upon the filing of the complaint, the  
15 court shall set the complaint down for hearing at the earliest  
16 possible time and shall cause all interested parties and the  
17 board to be notified. Pending review and upon application of any  
18 party in interest, the court may grant such temporary relief or  
19 restraining order and may impose such terms and conditions as it  
20 deems determines just and proper; ~~provided~~ except that the  
21 board's decision or order is not stayed, except when it is  
22 clearly shown to the satisfaction of the court that substantial  
23 and irreparable injury will be sustained or that there is a  
24 substantial risk of danger to the public health or safety. The  
25 executive director shall forthwith file in the court the record  
26 in the proceeding certified by the executive director or a member  
27 of the board. The record must include all documents filed in the  
28 proceeding and the transcript, if any. After hearing, ~~that~~ which  
29 must be held not less than 7 days after notice thereof, the court  
30 may enforce, modify, enforce as so modified or set aside in whole  
31 or in part the decision of the board, except that the finding of  
32 the board on questions of fact are is final unless shown to be  
33 clearly erroneous. Any appeal to the Law Court must be the same  
34 as an appeal from an interlocutory order under section 6.

35 **Sec. 6. 26 MRSA §1028, sub-§2,** amended by PL 1991, c. 143, §6,  
36 is further amended to read:

37 **2. Review of representation proceedings.** Any person  
38 aggrieved by any ruling or determination of the executive  
39 director under sections 1024 and 1025 may appeal, within 15 days  
40 of the announcement of the ruling or determination, except that  
41 in the instance of objections to the conduct of an election or  
42 challenged ballots the time period is 5 working days, to the  
43 Maine Labor Relations Board. Upon receipt of such an appeal, the  
44 board shall within a reasonable time, hold a hearing, having  
45 first caused 7 days' notice, in writing, of the time and place of  
46 such the hearings to be given to the aggrieved party, the labor  
47 organizations or bargaining agent and the public employer. ~~Such~~  
48 The hearings and the procedures established in furtherance  
49 thereof must be in accordance with section 968. Decisions of the  
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51  
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2 board made pursuant to this subsection are subject to review by  
3 the Superior Court under the Maine Rules of Civil Procedure, Rule  
4 80C, in the manner accordance with the standards specified in  
5 section 972, provided if the complaint is filed within 15 days of  
6 the date of issuance of the decision. The complaint must be  
7 served upon the board and all parties to the board proceeding by  
8 certified mail, return receipt requested.

9  
10 **Sec. 7. 26 MRSA §1029, sub-§7,** as amended by PL 1991, c. 143,  
11 §7, is further amended to read:

12 **7. Court review.** Either party may seek a review by the  
13 Superior Court in Kennebec County of a decision or order of the  
14 Maine Labor Relations Board by filing a complaint in accordance  
15 with the Maine Rules of Civil Procedure, Rule 80C, provided the  
16 complaint is filed within 15 days of the date of issuance of the  
17 decision. The complaint must be served upon the board and all  
18 parties to the board proceeding by certified mail, return receipt  
19 requested. Upon the filing of the complaint, the court shall set  
20 the complaint down for hearing at the earliest possible time and  
21 shall cause all interested parties and the board to be notified.  
22 Pending review and upon application of any part in interest, the  
23 court may grant such temporary relief or restraining order and  
24 may impose such terms and conditions as it deems just and proper;  
25 provided except that the board's decision or order is not stayed,  
26 except when it is clearly shown to the satisfaction of the court  
27 that substantial and irreparable injury will be sustained. The  
28 executive director shall forthwith file in the court the record  
29 in the proceeding certified by the executive director or a member  
30 of the board. The record must include all documents filed in the  
31 proceeding and the transcript, if any. After hearing, that which  
32 must be held not less than 7 days after notice thereof, the court  
33 may enforce, modify, enforce as so modified, or set aside in  
34 whole or in part the decision of the board, except that the  
35 finding of the board on questions of fact are is final unless  
36 shown to be clearly erroneous. Any appeal to the Law Court must  
37 be the same as an appeal from an interlocutory order under  
38 subsection 6.

39  
40 **Sec. 8. 26 MRSA §1288, sub-§2,** as amended by PL 1991, c. 143,  
41 §8, is further amended to read:

42  
43 **2. Review of representation proceedings.** Any person  
44 aggrieved by any ruling or determination of the executive  
45 director under sections 1286 and 1287 may appeal, within 15 days  
46 of the announcement of the ruling or determination, except that  
47 in the instance of objections to the conduct of an election or  
48 challenged ballots the time period is 5 working days, to the  
49 Maine Labor Relations Board. Upon receipt of such an appeal, the  
50 board shall, within a reasonable time, hold a hearing, having  
51 first caused 7 days' notice in writing of the time and place of  
52 that hearing to be given to the aggrieved party, the labor

2 organizations or bargaining agent and the public employer. The  
3 hearings and the procedures established in furtherance thereof  
4 must be in accordance with section 968. Decisions of the board  
5 made pursuant to this subsection are subject to review by the  
6 Superior Court under the Maine Rules of Civil Procedure, Rule  
7 80C, in the manner accordance with the standards specified in  
8 section 1292, provided the complaint is filed within 15 days of  
9 the date of issuance of the decision. The complaint must be  
10 served upon the board and all parties to the board proceeding by  
11 certified mail, return receipt requested.

12 **Sec. 9. 26 MRSA §1289, sub-§7**, as amended by PL 1991, c. 143,  
13 §9, is further amended to read:

14  
15 **7. Court review.** Either party may seek a review by the  
16 Superior Court in Kennebec County of a decision or order of the  
17 Maine Labor Relations Board by filing a complaint in accordance  
18 with the Maine Rules of Civil Procedure, Rule 80C, provided that  
19 the complaint must be filed within 15 days of the date of  
20 issuance of the decision. The complaint must be served upon the  
21 board and all parties to the board proceeding by certified mail,  
22 return receipt requested. Upon the filing of the complaint, the  
23 court shall set the complaint down for hearing at the earliest  
24 possible time and shall cause all interested parties and the  
25 board to be notified. Pending review and upon application of any  
26 party in interest, the court may grant such temporary relief or  
27 restraining order and may impose such terms and conditions as it  
28 deems determines just and proper; provided except that the  
29 board's decision or order is not stayed, except when it is  
30 clearly shown to the satisfaction of the court that substantial  
31 and irreparable injury will be sustained or that there is a  
32 substantial risk of danger to the public health, safety or  
33 welfare or interference with the exercise of the judicial power.  
34 The executive director shall forthwith file in the court the  
35 record in the proceeding certified by the executive director or a  
36 member of the board. The record must include all documents filed  
37 in the proceeding and the transcript, if any. After hearing,  
38 ~~that~~ which must be held not less than 7 days after notice  
39 thereof, the court may enforce, modify, enforce as so modified or  
40 set aside in whole or in part the decision of the board, except  
41 that the finding of the board on questions of fact ~~must-be~~ is  
42 final unless shown to be clearly erroneous. Any appeal to the  
43 Law Court must be expedited in the same manner as an appeal from  
44 an interlocutory order under section 6.

46 **Sec. 10. 26 MRSA §1292, sub-§1**, as amended by PL 1991, c. 143,  
47 §10, is further amended to read:

48  
49 **1. Review by Superior Court.** Either party may seek a  
50 review by the Superior Court of a binding determination by an  
51 arbitration panel. For interest arbitrations, the review must be  
52 sought in accordance with the Maine Rules of Civil Procedure,  
53 Rule 80C 80B.

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## STATEMENT OF FACT

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During the First Regular Session of the 115th Legislature, Public Law 1991, chapter 143 was enacted to clarify the appellate procedures of the Maine Labor Relations Board under the public sector labor laws. Those changes did not correct all of the inconsistencies among the 4 labor laws that the board administers. This bill ensures that under all 4 laws, board decisions, both prohibited practice decisions and decisions in connection with board review of representation matters, will be appealable pursuant to the Maine Rules of Civil Procedure, Rule 80C while interest arbitrations will be appealable pursuant to Rule 80B. Rule 80B is the appropriate vehicle for interest arbitration appeals, since that rule places the burden for preparation and submission of the record for review upon the appellant and not on the board. As a general matter, records in connection with interest arbitration proceedings are not provided to and maintained by the board.

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The bill also specifies that a party who appeals a board decision to Superior Court must serve the appellate complaint upon the board and all other parties to the board proceeding.