

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1847

S.P. 675

In Senate, February 8, 1994

An Act Concerning Agency Service Fees.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Labor 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 BUSTIN of Kennebec.
Cosponsored by Senator: HANDY of Androscoggin, Representatives: CLARK of Millinocket,
JOHNSON of South Portland, MORRISON of Bangor, OLIVER of Portland, PARADIS of
Augusta, PINEAU of Jay, ROTONDI of Athens.

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

2 **Sec. 1. 26 MRSA §964, sub-§2, ¶C**, as enacted by PL 1969, c.
4 424, §1, is amended to read:

6 C. Engaging in

8 (1) A work stoppage;

10 (2) A slowdown;

12 (3) A strike; or

14 (4) The blacklisting of any public employer for the
16 purpose of preventing it from filling employee
vacancies; or

18 **Sec. 2. 26 MRSA §964, sub-§2, ¶D** is enacted to read:

20 D. Discriminating against an employee on the basis of the
22 employee's membership, nonmembership or agency fee status in
an employee organization or its affiliates.

24 **Sec. 3. 26 MRSA §975** is enacted to read:

26 §975. Payment of membership dues or agency service fee

28 1. Payment of dues or fee. The public employer shall
30 require, as a condition of employment, that an employee pay
32 membership dues or agency service fees to the employee
34 organization that is the exclusive bargaining agent for the unit
36 in which that employee is employed. The employer may not require
38 the payment of the agency service fee before the 30th day
40 following the beginning of employment or the effective date of
the agreement, whichever is later. The amount of the agency
service fee required of a nonmember may not exceed the amount
required to become a member and remain a member in good standing
of the bargaining agent and its affiliates to which membership
dues or per capita fees are paid. The agency service fee may not
include any share of expenditures by the organization or its
affiliates for:

42 A. Contributions to a political candidate or a political
44 committee formed for a candidate or a political party;

46 B. Publicizing an organizational preference for a candidate
48 for political office;

50 C. Efforts to enact, defeat, repeal or amend legislation
unrelated to the wages, hours, standards of productivity and

2 performance, other terms and conditions of employment or the
3 welfare of employees represented by the bargaining agent or
4 its affiliates;

5 D. Contributions to charitable, religious or ideological
6 causes not germane to its duties as bargaining agent;

7 E. Benefits that are available only to members of the
8 employee organization; or

9 F. Benefits that are not germane to its duties as
10 bargaining agent or to the governance of the bargaining
11 agent or its affiliates.

12 2. Explanation of agency service fee. Upon an employee's
13 request, the bargaining agent shall provide a written explanation
14 of the basis for the calculation of the agency service fee. At a
15 minimum, this explanation must include the identification of
16 major categories of expenses.

17 3. Objections to fee amount. An employee who objects to
18 the amount of an agency service fee may file a written complaint
19 with the board as provided in section 968, subsection 5. Except
20 for good cause shown, an objection to the amount of the agency
21 service fee must be filed within 6 months of the due date of the
22 first fee payment.

23 4. Escrow account. Upon notice of an employee's complaint,
24 the bargaining agent shall place the nonmember employee's agency
25 service fees into an interest-bearing escrow account while the
26 resolution of the complaint is pending. If the explanation of
27 the agency service fee provided under subsection 2 includes a
28 certified public accountant's verified breakdown of expenditures,
29 the employee organization may escrow only that portion of the fee
30 that could reasonably be in dispute.

31 5. Resolution of dispute. The board shall provide for a
32 reasonably prompt decision in accordance with section 968,
33 subsection 5. The board may defer to an established internal
34 procedure of the bargaining agent if that procedure provides for
35 a reasonably prompt decision by an impartial decision maker.

36 **Sec. 4. 26 MRSA §979-C, sub-§2, ¶C, as enacted by PL 1973, c.**
37 **774, is amended to read:**

38 C. Engaging in:

39 (1) A work stoppage;

40 (2) A slowdown;

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(3) A strike; or

(4) The blacklisting of the public employer for the purpose of preventing it from filling employee vacancies; or

Sec. 5. 26 MRSA §979-C, sub-§2, ¶D is enacted to read:

D. Discriminating against an employee on the basis of the employee's membership, nonmembership or agency fee status in an employee organization or its affiliates.

Sec. 6. 26 MRSA §979-R is enacted to read:

§979-R. Payment of membership dues or agency service fee

1. Payment of dues or fee. The public employer shall require, as a condition of employment, that an employee pay membership dues or agency service fees to the employee organization that is the exclusive bargaining agent for the unit in which that employee is employed. The employer may not require the payment of the agency service fee before the 30th day following the beginning of employment or the effective date of the agreement, whichever is later. The amount of the agency service fee required of a nonmember may not exceed the amount required to become a member and remain a member in good standing of the bargaining agent and its affiliates to which membership dues or per capita fees are paid. The agency service fee may not include any share of expenditures by the organization or its affiliates for:

A. Contributions to a political candidate or a political committee formed for a candidate or a political party;

B. Publicizing an organizational preference for a candidate for political office;

C. Efforts to enact, defeat, repeal or amend legislation unrelated to the wages, hours, standards of productivity and performance, other terms and conditions of employment or the welfare of employees represented by the bargaining agent or its affiliates;

D. Contributions to charitable, religious or ideological causes not germane to its duties as bargaining agent;

E. Benefits that are available only to members of the employee organization; or

2 F. Benefits that are not germane to its duties as
4 bargaining agent or to the governance of the bargaining
6 agent or its affiliates.

8 2. Explanation of agency service fee. Upon an employee's
10 request, the bargaining agent shall provide a written explanation
12 of the basis for the calculation of the agency service fee. At a
14 minimum, this explanation must include the identification of
16 major categories of expenses.

18 3. Objections to fee amount. An employee who objects to
20 the amount of an agency service fee may file a written complaint
22 with the board as provided in section 979-H. Except for good
24 cause shown, an objection to the amount of the agency service fee
26 must be filed within 6 months of the due date of the first fee
28 payment.

30 4. Escrow account. Upon notice of an employee's complaint,
32 the bargaining agent shall place the nonmember employee's agency
34 service fees into an interest-bearing escrow account while the
36 resolution of the complaint is pending. If the explanation of
38 the agency service fee provided under subsection 2 includes a
40 certified public accountant's verified breakdown of expenditures,
42 the employee organization may escrow only that portion of the fee
44 that could reasonably be in dispute.

46 5. Resolution of dispute. The board shall provide for a
48 reasonably prompt decision in accordance with section 979-H. The
50 board may defer to an established internal procedure of the
52 bargaining agent if that procedure provides for a reasonably
54 prompt decision by an impartial decision maker.

56 Sec. 7. 26 MRSA §1027, sub-§2, ¶¶B and C, as amended by PL
58 1989, c. 443, §72, are further amended to read:

60 B. Refusing to bargain collectively with the university,
62 academy and technical colleges as required by section 1026;
64 and

66 C. Engaging in:

68 (1) A work stoppage, slowdown or strike; and

70 (2) The blacklisting of the university, academy or
72 technical colleges for the purpose of preventing them
74 from filling employee vacancies; or

76 Sec. 8. 26 MRSA §1027, sub-§2, ¶D is enacted to read:

2 D. Discriminating against an employee on the basis of the
3 employee's membership, nonmembership or agency fee status in
4 an employee organization or its affiliates.

6 Sec. 9. 26 MRSA §1036 is enacted to read:

8 §1036. Payment of membership dues or agency service fee

10 1. Payment of dues or fee. The public employer shall
11 require, as a condition of employment, that an employee pay
12 membership dues or agency service fees to the employee
13 organization that is the exclusive bargaining agent for the unit
14 in which that employee is employed. The employer may not require
15 the payment of the agency service fee before the 30th day
16 following the beginning of employment or the effective date of
17 the agreement, whichever is later. The amount of the agency
18 service fee required of a nonmember may not exceed the amount
19 required to become a member and remain a member in good standing
20 of the bargaining agent and its affiliates to which membership
21 dues or per capita fees are paid. The agency service fee may not
22 include any share of expenditures by the organization or its
23 affiliates for:

24 A. Contributions to a political candidate or a political
25 committee formed for a candidate or a political party;

26 B. Publicizing an organizational preference for a candidate
27 for political office;

28 C. Efforts to enact, defeat, repeal or amend legislation
29 unrelated to the wages, hours, standards of productivity and
30 performance, other terms and conditions of employment or the
31 welfare of employees represented by the bargaining agent or
32 its affiliates;

33 D. Contributions to charitable, religious or ideological
34 causes not germane to its duties as bargaining agent;

35 E. Benefits that are available only to members of the
36 employee organization; or

37 F. Benefits that are not germane to its duties as
38 bargaining agent or to the governance of the bargaining
39 agent or its affiliates.

40 2. Explanation of agency service fee. Upon an employee's
41 request, the bargaining agent shall provide a written explanation
42 of the basis for the calculation of the agency service fee. At a
43 minimum, this explanation must include the identification of
44 major categories of expenses.

2 3. Objections to fee amount. An employee who objects to
3 the amount of an agency service fee may file a written complaint
4 with the board as provided in section 1029. Except for good
5 cause shown, an objection to the amount of the agency service fee
6 must be filed within 6 months of the due date of the first fee
7 payment.

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9 4. Escrow account. Upon notice of an employee's complaint,
10 the bargaining agent shall place the nonmember employee's agency
11 service fees into an interest-bearing escrow account while the
12 resolution of the complaint is pending. If the explanation of
13 the agency service fee provided under subsection 2 includes a
14 certified public accountant's verified breakdown of expenditures,
15 the employee organization may escrow only that portion of the fee
16 that could reasonably be in dispute.

17 5. Resolution of dispute. The board shall provide for a
18 reasonably prompt decision in accordance with section 1029. The
19 board may defer to an established internal procedure of the
20 bargaining agent if that procedure provides for a reasonably
21 prompt decision by an impartial decision maker.

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23 **Sec. 10. 26 MRSA §1284, sub-§2, ¶C,** as enacted by PL 1983, c.
24 702, is amended to read:

25 C. Engaging in:

- 26
27 (1) A work stoppage;
28 (2) A slowdown;
29 (3) A strike; or
30 (4) The blacklisting of the public employer for the
31 purpose of preventing it from filling employee
32 vacancies; or
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34 **Sec. 11. 26 MRSA §1284, sub-§2, ¶D** is enacted to read:

35 D. Discriminating against an employee on the basis of the
36 employee's membership, nonmembership or agency fee status in
37 an employee organization or its affiliates.

38 **Sec. 12. 26 MRSA §1295** is enacted to read:

39 **§1295. Payment of membership dues or agency service fee**

40 1. Payment of dues or fee. The public employer shall
41 require, as a condition of employment, that an employee pay
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2 membership dues or agency service fees to the employee
3 organization that is the exclusive bargaining agent for the unit
4 in which that employee is employed. The employer may not require
5 the payment of the agency service fee before the 30th day
6 following the beginning of employment or the effective date of
7 the agreement, whichever is later. The amount of the agency
8 service fee required of a nonmember may not exceed the amount
9 required to become a member and remain a member in good standing
10 of the bargaining agent and its affiliates to which membership
11 dues or per capita fees are paid. The agency service fee may not
12 include any share of expenditures by the organization or its
13 affiliates for:

14 A. Contributions to a political candidate or a political
15 committee formed for a candidate or a political party;

16 B. Publicizing an organizational preference for a candidate
17 for political office;

18 C. Efforts to enact, defeat, repeal or amend legislation
19 unrelated to the wages, hours, standards of productivity and
20 performance, other terms and conditions of employment or the
21 welfare of employees represented by the bargaining agent or
22 its affiliates;

23 D. Contributions to charitable, religious or ideological
24 causes not germane to its duties as bargaining agent;

25 E. Benefits that are available only to members of the
26 employee organization; or

27 F. Benefits that are not germane to its duties as
28 bargaining agent or to the governance of the bargaining
29 agent or its affiliates.

30 2. Explanation of agency service fee. Upon an employee's
31 request, the bargaining agent shall provide a written explanation
32 of the basis for the calculation of the agency service fee. At a
33 minimum, this explanation must include the identification of
34 major categories of expenses.

35 3. Objections to fee amount. An employee who objects to
36 the amount of an agency service fee may file a written complaint
37 with the board as provided in section 1289. Except for good
38 cause shown, an objection to the amount of the agency service fee
39 must be filed within 6 months of the due date of the first fee
40 payment.

41 4. Escrow account. Upon notice of an employee's complaint,
42 the bargaining agent shall place the nonmember employee's agency
43 dues in an escrow account.

2 service fees into an interest-bearing escrow account while the
3 resolution of the complaint is pending. If the explanation of
4 the agency service fee provided under subsection 2 includes a
5 certified public accountant's verified breakdown of expenditures,
6 the employee organization may escrow only that portion of the fee
7 that could reasonably be in dispute.

8 5. Resolution of dispute. The board shall provide for a
9 reasonably prompt decision in accordance with section 1289. The
10 board may defer to an established internal procedure of the
11 bargaining agent if that procedure provides for a reasonably
12 prompt decision by an impartial decision maker.

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16 **STATEMENT OF FACT**

18 This bill requires that a public employer make the payment
19 of union membership dues or agency service fees a condition of
20 employment. An employee who is not a member of the union may be
21 required to pay an agency service fee to the union, but the bill
22 specifies that the cost of activities not germane to collective
23 bargaining and grievance administration may not be included in
24 the calculation of the fee. The bill also provides the
25 procedural safeguards required to protect the First Amendment
26 rights of the nonmember as presented by the United State Supreme
27 Court in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986).

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33 This document has not yet been reviewed to determine the
34 need for cross-reference, stylistic and other technical
35 amendments to conform existing law to current drafting standards.
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