

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 69

S.P. 39

In Senate, January 17, 1995

An Act to Require Binding Arbitration for Public Employees.

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator RAND of Cumberland.
Cosponsored by Senator: RUHLIN of Penobscot, Representatives: ADAMS of Portland,
FITZPATRICK of Durham, JOSEPH of Waterville, LEMKE of Westbrook, MARTIN of
Eagle Lake, MITCHELL of Portland, NADEAU of Saco, SHIAH of Bowdoinham,
TOWNSEND of Portland, TREAT of Gardiner, VOLENIK of Sedgwick.

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

4 **Sec. 1. 26 MRSA §962, sub-§3-A** is enacted to read:

6 3-A. Economic issue. "Economic issue" means an issue that concerns wages, pensions or insurance.

8 **Sec. 2. 26 MRSA §965, sub-§4**, as amended by PL 1975, c. 564, §18, is repealed and the following enacted in its place:

10 4. Arbitration. The following procedure is established to resolve collective bargaining disputes under this chapter. In addition to the 30-day period referred to in subsection 3, the parties have 15 more days, making a total period of 45 days from the submission of findings and recommendations, in which to make a good faith effort to resolve their controversy.

18 A. If the parties have not resolved their controversy by the end of the 45-day period, they may jointly agree to an arbitration procedure that will result in a binding determination of their controversy. Such determinations are subject to review by the Superior Court in the manner specified by section 972.

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

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

38 (2) Within 10 days after receiving the request, the executive director shall select a neutral arbitrator from the neutral list of fact finders. The executive director shall promptly notify each party in writing of the name and address of the neutral arbitrator selected by the executive director. The neutral arbitrator may not be, without the consent of both parties, the same person selected as mediator under subsection 2, nor any member of the fact-finding board selected under subsection 3. The neutral arbitrator selected by the executive director shall serve as chair of the arbitration panel.

2 B. As soon as possible after the neutral arbitrator is
3 selected, the 3 arbitrators or, if either party has not
4 selected its arbitrator, the 2 arbitrators, shall meet with
5 the parties or their representatives, or both, either
6 jointly or separately, make inquiries and investigations,
7 hold hearings or take any other steps that the arbitrators
8 consider appropriate.

9
10 (1) The arbitration proceeding must be conducted in
11 accordance with the rules and procedures adopted by the
12 board and must closely follow the rules and procedures
13 of the American Arbitration Association.

14 (2) The hearings must be informal, and the rules of
15 evidence applicable to judicial proceedings do not
16 apply. All documentary evidence and other data
17 considered relevant by the arbitrators may be received
18 in evidence.

19
20 (3) The arbitrators may administer oaths and require
21 by subpoena the attendance and testimony of witnesses
22 and the production of books, records and other evidence
23 relevant to the issues represented to them for
24 determination.

25
26 C. At least 7 days before the arbitration hearing, the
27 neutral arbitrator shall notify the employer, bargaining
28 agent and executive director of the time and place of the
29 hearing. If the controversy is not resolved by the parties,
30 the arbitrators shall proceed as follows.

31
32 (1) At least 2 days before the hearing begins, each
33 party shall file with the executive director and the
34 arbitrator or arbitrators and deliver to the other
35 party a proposed collective bargaining agreement, in
36 numbered paragraphs, that that party is willing to
37 execute and the cost data for all provisions of the
38 proposed agreement.

39
40 (2) At the commencement of the hearing, each party
41 shall file with the arbitrator or arbitrators a reply
42 setting forth:

43
44 (a) Those paragraphs of the agreement proposed by
45 the other party that it is willing to accept; and

46
47 (b) Those paragraphs of the proposed agreement
48 that it is unwilling to accept, together with any
49 alternative contract language that it would accept
50 in place of those paragraphs.

2 (3) Within 5 days after the conclusion of taking
3 testimony, the parties may jointly file with the
4 arbitrator or arbitrators stipulations setting forth
5 agreement provisions that both parties have agreed to
6 accept.

7 (4) Within 10 days after the conclusion of taking
8 testimony, the arbitrator or arbitrators shall forward
9 to each party and to the executive director an
10 arbitration statement setting forth:

11 (a) In numbered paragraphs, all provisions in the
12 proposed agreements that are agreed to by both
13 parties;

14 (b) The replies and any stipulations filed by the
15 parties, and stating, in numbered paragraphs,
16 those issues that are resolved; and

17 (c) In numbered paragraphs, all of the unresolved
18 items and identifying as to which of the
19 unresolved items are economic issues.

20 The determination of the majority of arbitrators as to
21 the issues in dispute and as to which issues are
22 economic is conclusive.

23 (5) Within 5 days after receiving the arbitration
24 statement, each party shall file a statement of last
25 best offer with the arbitrator or arbitrators and send
26 a copy to the opposing party. The statement of last
27 best offer must set forth, in numbered paragraphs
28 corresponding to the statement of unresolved issues
29 contained in the arbitration statement, the final
30 agreement proposed by that party.

31 D. Within 20 days after the last day for filing the
32 statements of last best offer, the arbitrator or arbitrators
33 shall issue their decision on all unresolved issues set
34 forth in the arbitration statement. The arbitrator or
35 arbitrators shall treat each unresolved issue set forth in
36 the arbitration statement as a separate question to be
37 decided. In deciding each issue, the last best offer
38 proposed by one party or the other as specified in the
39 statements filed under paragraph C, subparagraph (5) must be
40 accepted by a majority of the arbitrators. The arbitrator
41 or arbitrators may not choose a resolution of a disputed
42 issue other than as offered by one of the parties. A copy
43 of the decision must be immediately distributed to each
44 party and to the executive director. These decisions are
45 subject to review by the Superior Court in the manner
46 specified by section 972.

2 In reaching a decision under this paragraph, the arbitrator
3 or arbitrators shall consider the following factors:

4
5 (1) The negotiations between the parties before
6 arbitration;

7
8 (2) The interests and welfare of the public and the
9 financial ability of the governmental unit to finance
10 the cost items proposed by each party to the dispute;

11
12 (3) Changes in the cost of living;

13
14 (4) The interests and welfare of the public employee
15 group;

16
17 (5) Comparison of the wages, hours and working
18 conditions, including but not limited to hazards of the
19 job, of the employees involved in the arbitration
20 proceeding with the wages, hours and working conditions
21 of other employees performing similar services in
22 public and private employment in other jurisdictions
23 competing in the same labor market;

24
25 (6) The overall compensation presently received by the
26 public employees, including direct wage compensation,
27 vacation, holidays, excused time, insurance, pensions,
28 medical and hospitalization benefits, the continuity
29 and stability of employment and all other benefits
30 needed;

31
32 (7) Any other factors not confined to this subsection
33 that are normally and traditionally taken into
34 consideration in the determination of wages, hours and
35 working conditions through voluntary collective
36 bargaining, mediation, fact-finding, arbitration or
37 otherwise between the parties in the public service or
38 in private employment, including wage and price
39 statistics compiled by State Government or Federal
40 Government;

41
42 (8) The need of the public employer for qualified
43 public employees;

44
45 (9) Conditions of employment in similar occupations
46 outside the governmental units;

47
48 (10) The need to maintain appropriate relationships
49 between different occupations in the governmental unit;
50 and

2 on each disputed issue; the arbitrators may not choose a
3 resolution of a disputed issue other than as offered by one or
4 the other party. The discretion of arbitrators in making their
5 decisions is limited by 11 specific criteria that the arbitrators
6 must consider, such as the ability of the local governmental unit
7 to pay and wage comparisons.

8 Once the arbitrators' decision is issued, the parties are
9 given a final opportunity to negotiate a settlement. If the
10 parties fail to agree to a negotiated settlement within 10 days,
11 the arbitrators' rulings are binding on both parties for all
12 issues submitted to arbitration.