

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2096

H.P. 1497

House of Representatives, January 20, 1998

An Act to Give Collective Bargaining Rights to Legislative Employees.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative LINDAHL of Northport.

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

4 **Sec. 1. 26 MRSA §979**, as enacted by PL 1973, c. 774, is amended to read:

6 **§979. Purpose**

8 It is declared to be the public policy of this State and it
10 is the purpose of this chapter to promote the improvement of the
12 relationship between the State ~~of Maine~~ and its employees and
14 between the Legislature and its employees by providing a uniform
16 basis for recognizing the right of state or legislative employees
18 to join labor organizations of their own choosing and to be
20 represented by such organizations in collective bargaining for
22 terms and conditions of employment.

16 **Sec. 2. 26 MRSA §979-A, sub-§4-A** is enacted to read:

18 **4-A. Legislative employee.** "Legislative employee" means
20 any employee of the Legislature performing services within the
22 legislative branch, except any person:

24 A. Who is elected by popular vote;

26 B. Who is appointed to office pursuant to law by the
Governor or the Legislature for a specific term;

28 C. Who is employed in the office of the Secretary of the
30 Senate, the office of the Clerk of the House of
Representatives or the majority or minority offices of the
32 Senate or the House of Representatives;

34 D. Whose duties as deputy, administrative assistant or
secretary necessarily imply a confidential relationship with
36 respect to matters subject to collective bargaining, as
between that person and the Legislative Council;

38 E. Who is a temporary, on-call employee; or

40 F. Who has been employed less than 30 days.

42 **Sec. 3. 26 MRSA §979-A, sub-§5**, as amended by PL 1991, c. 780,
44 Pt. Y, §121, is further amended to read:

46 **5. Public employer.** "Public employer" means, with respect
to the executive branch, all the departments, agencies and
48 commissions of the executive branch of the State of Maine,
represented by the Governor or his the Governor's designee. In
50 the furtherance of this chapter, the State shall-be is considered
as a single employer and employment relations, policies and

2 practices throughout the state service shall must be as
3 consistent as practicable. It With respect to state employees,
4 it is the responsibility of the executive branch to negotiate
5 collective bargaining agreements and to administer such
6 agreements. To coordinate the employer position in the
7 negotiation of agreements, the Legislative Council or its
8 designee shall maintain close liaison with the Governor or ~~his~~
9 the Governor's designee representing the executive branch
10 relative to the negotiation of cost items in any proposed
11 agreement. The Governor is responsible for the employer functions
12 of the executive branch under this chapter, and shall coordinate
13 its collective bargaining activities with operating agencies on
14 matters of agency concern. It is the responsibility of the
15 legislative branch to act upon those portions of tentative
16 agreements negotiated by the executive branch ~~which~~ that require
legislative action.

18 "Public employer" means, with respect to the legislative branch,
19 all offices or agencies of the Legislature represented by the
20 Legislative Council or its designee. With respect to legislative
21 employees, the Legislative Council shall negotiate and administer
22 collective bargaining agreements. The Legislative Council or its
23 designee is responsible for the employer functions of the
24 legislative branch under this chapter.

26 The With respect to the executive branch, the Bureau of Employee
27 Relations, through the Commissioner of Administrative and
28 Financial Services, shall act as directed by the Governor to:

- 30 A. Develop and execute employee relations' policies,
31 objectives and strategies consistent with the overall
32 objectives of the Governor;
- 34 B. Conduct negotiations with certified and recognized
35 bargaining agents under applicable statutes;
- 36 C. Administer and interpret collective bargaining
37 agreements, and coordinate and direct agency activities as
38 necessary to promote consistent policies and practices;
- 40 D. Represent the State in all bargaining unit
41 determinations, elections, prohibited practice complaints
42 and any other proceedings growing out of employee relations
43 and collective bargaining activities;
- 46 E. Coordinate the compilation of all data and information
47 needed for the development and evaluation of employee
48 relations' programs and in the conduct of negotiations;

2 F. Coordinate the state's State's resources as needed to
represent the State in negotiations, mediation, ~~fact-finding~~
fact-finding, arbitration and other proceedings; and

4
6 G. Provide staff advice on employee relations to the
various departments and agencies of State Government,
including providing for necessary supervisory and managerial
8 training.

10 All state departments and agencies shall provide such assistance,
services and information as required by the Governor's office, or
12 the Bureau of Employee Relations, and shall take such
administrative or other action as may be necessary to implement
14 and administer the provisions of any binding agreement between
the State and employee organizations entered into under law.

16 **Sec. 4. 26 MRSA §979-B**, as enacted by PL 1973, c. 774, is
18 amended to read:

20 **§979-B. Right of state employees or legislative employees to join
labor organizations**

22 ~~No--one--shall~~ A person may not directly or indirectly
24 interfere with, intimidate, restrain, coerce or discriminate
against state or legislative employees or a group of state
26 employees in the free exercise of their rights, hereby given,
voluntarily to join, form and participate in the activities of
28 organizations of their own choosing for the purposes of
representation and collective bargaining, or in the free exercise
30 of any other right under this chapter.

32 **Sec. 5. 26 MRSA §979-C, sub-§2**, as enacted by PL 1973, c. 774,
is amended to read:

34 **2. State and legislative employee prohibitions.** State and
36 legislative employees, State employee organizations, their
agents, members and bargaining agents are prohibited from:

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40 A. Interfering with, restraining or coercing employees in
the exercise of the rights guaranteed in section 979-B or
42 the public employer in the selection of its representative
for purposes of collective bargaining or the adjustment of
grievances;

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46 B. Refusing to bargain collectively with the public
employer as required by section 979-D;

48 C. Engaging in:

50 (1) A work stoppage;

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- (2) A slowdown;
- (3) A strike; or
- (4) The blacklisting of the public employer for the purpose of preventing it from filling employee vacancies.

Sec. 6. 26 MRSA §979-D, sub-§1, ¶E, as amended by PL 1989, c. 596, Pt. N, §4, is further amended by amending subparagraphs (f) and (g) to read:

(f) Rules for personnel administration, except the following: Rules relating to applicants for employment in state or legislative service and state classified employees in an initial probationary status, including any extensions thereof, provided such rules are not discriminatory by reason of an applicant's race, color, creed, sex or national origin;

(g) Compensation system for state and legislative employees, which is defined as:

(i) Guide charts, if any, and job evaluation factors, including factor language and factor weights, used to evaluate jobs for pay purposes;

(ii) Job point to pay grade conversion tables;

(iii) The number of and spread between pay steps within pay grades;

(iv) The number of and spread between pay grades within the system; and

(v) Temporary payment of recruitment and retention stipends, provided the stipends are allowed under Civil Service Law;

Sec. 7. 26 MRSA §979-D, sub-§4, ¶C, as enacted by PL 1973, c. 774, is amended to read:

C. In reaching a decision under this paragraph, the arbitrator shall consider the following factors:

- 2 (1) The interests and welfare of the public and the
4 financial ability of the State Government to finance
6 the cost items proposed by each party to the impasse;
- 8 (2) Comparison of the wages, hours and working
10 conditions of the employees involved in the arbitration
12 proceeding with the wages, hours and working conditions
14 of other employees performing similar services in
16 public and private employment in other jurisdictions
18 competing in the same labor market;
- 20 (3) The over-all compensation presently received by
22 the employees including direct wage compensation,
24 vacation, holidays and excused time, insurance and
26 pensions, medical and hospitalization benefits, the
28 continuity and stability of employment, and all other
30 benefits received;
- 32 (4) Such other factors not confined to the foregoing,
34 which are normally and traditionally taken into
36 consideration in the determination of wages, hours and
38 working conditions through voluntary collective
40 bargaining, mediation, fact-finding, arbitration or
42 otherwise between the parties, in the public service or
44 in private employment, including the average consumer
46 price index;
- 48 (5) The need of State Government and the Legislature
for qualified employees;
- (6) Conditions of employment in similar occupations
outside State Government or the legislative branch;
- (7) The need to maintain appropriate relationships
between different occupations in State Government or in
the legislative branch; and
- (8) The need to establish fair and reasonable
conditions in relation to job qualifications and
responsibilities.

42 **Sec. 8. 26 MRSA §979-H, sub-§1**, as enacted by PL 1973, c. 774,
44 is amended to read:

46 1. The board is empowered, as provided, to prevent any
48 person, the public employer, any state employee, or any
legislative employee, any state employee organization or any
bargaining agent from engaging in any of the prohibited acts
enumerated in section 979-C. This power shall may not be affected

2 by any other means of adjustment or prevention that has been or
3 may be established by agreement, law or otherwise.

4 **Sec. 9. 26 MRSA §979-H, sub-§2**, as amended by PL 1975, c. 697,
5 §11, is further amended to read:

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7 2. The public employer, any state employee, any legislative
8 employee, any state employee organization or any bargaining agent
9 which that believes that any person, the public employer, any
10 state employee, any legislative employee, any state employee
11 organization or any bargaining agent has engaged in or is
12 engaging in any such prohibited practice may file a complaint
13 with the executive director of the board stating the charges in
14 that regard. ~~No-such~~ A complaint shall may not be filed with the
15 executive director until the complaining party ~~shall~~ has
16 served a copy thereof upon the party complained of. Upon receipt
17 of such complaint, the executive director or ~~his~~ the executive
18 director's designee shall review the charge to determine whether
19 the facts as alleged may constitute a prohibited act. If it is
20 determined that the facts do not, as a matter of law, constitute
21 a violation, the charge shall must be dismissed by the executive
22 director, subject to review by the board. If a formal hearing is
23 deemed considered necessary by the executive director or by the
24 board, the executive director shall serve upon the parties to the
25 complaint a notice of the prehearing conference and of the
26 hearing before the board, ~~that~~. The notice ~~to~~ must designate the
27 time and place of hearing for the prehearing conference or the
28 hearing, as appropriate, provided that no hearing shall may be
29 held based upon any alleged prohibited practice occurring more
30 than 6 months prior to the filing of the complaint with the
31 executive director. The party complained of ~~shall have the right~~
32 ~~to~~ may file a written answer to the complaint and ~~to~~ may appear
33 in person or otherwise and give testimony at the place and time
34 fixed for the hearing. In the discretion of the board, any other
35 person or organization may be allowed to intervene in that
36 proceeding and to present testimony. ~~Nothing--in--this~~ This
37 subsection shall does not restrict the right of the board to
38 require the executive director or ~~his~~ the executive director's
39 designee to hold a prehearing conference on any prohibited
40 practice complaint prior to the hearing before the board and
41 taking whatever action, including dismissal, attempting to
42 resolve disagreements between the parties or recommending an
43 order to the board, as ~~he may deem~~ the executive director or the
44 executive director's designee considers appropriate, subject to
45 review by the board.

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47 **Sec. 10. 26 MRSA §979-H, sub-§6**, as enacted by PL 1973, c.
48 774, is amended to read:

2 6. Whenever a complaint is filed with the executive
3 director of the board, alleging that the public employer has
4 violated section 979-C, subsection 1, paragraph F or alleging
5 that a state employee, a legislative employee or state employee
6 organization or bargaining agent has violated section 979-C,
7 subsection 2, paragraph C, the party making the complaint may
8 simultaneously seek injunctive relief from the Superior Court in
9 the county in which the prohibited practice is alleged to have
10 occurred pending the final adjudication of the board with respect
11 to such matter.

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SUMMARY

15 This bill provides collective bargaining rights under the
16 State Employees Labor Relations Act for legislative employees.