

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1344

H.P. 990

House of Representatives, March 12, 2003

### An Act To Give Teachers a Greater Voice in School Improvement

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Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative NORTON of Bangor.  
Cosponsored by Senator EDMONDS of Cumberland and  
Representatives: BLANCHETTE of Bangor, CRAVEN of Lewiston, DAVIS of Falmouth,  
FISCHER of Presque Isle, HUTTON of Bowdoinham, MARLEY of Portland, THOMAS of  
Orono, Senator: DOUGLASS of Androscoggin.

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

2  
4       **Sec. 1. 26 MRSA §965, sub-§1, ¶C**, as enacted by PL 1969, c. 424, §1, is repealed and the following enacted in its place:

6       C. To confer and negotiate in good faith with respect to  
8       wages, hours, working conditions and contract grievance  
10       arbitration, except that by such obligation neither party is  
12       compelled to agree to a proposal or is required to make a  
14       concession and except that public employers of teachers  
16       shall meet and consult and may negotiate with respect to  
18       educational policies. For the purpose of this paragraph,  
20       educational policies do not include wages, hours, working  
22       conditions or contract grievance arbitration.

24       For the purpose of this paragraph, "wages, hours, working  
26       conditions and contract grievance arbitration" includes:

28               (1) The length of the teachers' working day, including  
30               the number and scheduling of hours that teachers are  
32               required to teach or be in attendance at school;

34               (2) The scheduling and length of the teachers' work  
36               year, including the scheduling and length of school  
38               vacation and the commencement and ending of the school  
40               year;

42               (3) The scheduling of teachers' assignments and duties  
44               within the teachers' working day, including time for  
46               planning, preparation and professional nonteaching  
48               activities and responsibilities for the supervision of  
50               students; and

(4) Procedures, criteria and standards for the  
              evaluation of teachers, including the frequency and  
              form of evaluations and the qualifications of  
              evaluators.

Provisions of collective bargaining agreements that  
              constitute, relate to, affect or concern "educational  
              policies" are valid and enforceable for the term of the  
              agreement and are subject to the grievance and arbitration  
              procedure of the agreement unless expressly excluded from  
              the grievance or arbitration procedure;

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

**4. Arbitration.** This subsection establishes arbitration  
              requirements and procedures.

2           A. In addition to the 30-day period referred to in  
4           subsection 3, paragraph C, the parties have 15 more days,  
6           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.

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

16          If they do not jointly agree to such an arbitration  
18          procedure within 10 days after the end of the 45-day period,  
20          then either party may, by written notice to the other,  
22          request that their differences be submitted to a board of 3  
24          arbitrators. The bargaining agent and the public employer  
26          shall within 5 days of such request each select and name one  
28          arbitrator and shall immediately thereafter notify each  
30          other in writing of the name and address of the person so  
32          selected. The first 2 arbitrators so selected and named  
34          shall, within 10 days from such request, agree upon and  
36          select and name a neutral arbitrator. If either party does  
38          not select its arbitrator or if the 2 arbitrators fail to  
40          agree upon, select and name a neutral arbitrator within the  
42          10 days, either party may request the American Arbitration  
44          Association to utilize its procedures for the selection of  
46          the neutral arbitrator. As soon as possible after receipt  
48          of that request, the neutral arbitrator must be selected in  
50          accordance with rules and procedures prescribed by the  
          American Arbitration Association for making that selection.  
          The neutral arbitrator so selected will not, without the  
          consent of both parties, be the same person who was selected  
          as mediator pursuant to subsection 2 nor any member of the  
          fact-finding board selected pursuant to subsection 3. As  
          soon as possible after the selection of the neutral  
          arbitrator, the 3 arbitrators or if either party has not  
          selected its arbitrator, the 2 arbitrators, as the case may  
          be, shall meet with the parties or their representatives, or  
          both, forthwith, either jointly or separately, make  
          inquiries and investigations, hold hearings, or take such  
          other steps as they consider appropriate. If the neutral  
          arbitrator is selected by utilizing the procedures of the  
          American Arbitration Association, the arbitration  
          proceedings must be conducted in accordance with the rules  
          and procedures of the American Arbitration Association. The  
          hearing must be informal, and the rules of evidence  
          prevailing in judicial proceedings are not binding. All

2 documentary evidence and other data considered relevant by  
3 the arbitrators may be received in evidence. The  
4 arbitrators have the power to administer oaths and to  
5 require by subpoena the attendance and testimony of  
6 witnesses and the production of books, records and other  
7 evidence relative or pertinent to the issues represented to  
8 the arbitrators for determination.

9  
10 If the controversy is not resolved by the parties  
11 themselves, the arbitrators shall proceed as follows.

12 (1) With respect to a controversy over salaries,  
13 pensions and insurance, the arbitrators shall recommend  
14 terms of settlement and may make findings of fact.  
15 Those recommendations and findings are advisory only  
16 and must be made, if reasonably possible, within 30  
17 days after the selection of the neutral arbitrator.  
18 The arbitrators may in their discretion make such  
19 recommendations and findings public, and either party  
20 may make such recommendations and findings public if  
21 agreement is not reached with respect to such findings  
22 and recommendations within 10 days after their receipt  
23 from the arbitrators.

24  
25 (2) With respect to a controversy over subjects other  
26 than salaries, pensions and insurance, the arbitrators  
27 shall make determinations with respect thereto if  
28 reasonably possible within 30 days after the selection  
29 of the neutral arbitrator. Such determinations may be  
30 made public by the arbitrators or either party. If  
31 made by a majority of the arbitrators, determinations  
32 are binding on both parties and the parties shall enter  
33 an agreement or take whatever other action that may be  
34 appropriate to carry out and effectuate such binding  
35 determinations. Such determinations are subject to  
36 review by the Superior Court in the manner specified by  
37 section 972.

38  
39 B. In reaching a decision under this section, the  
40 arbitrators shall consider the following factors:

41  
42 (1) The interests and welfare of the students and the  
43 public, and the financial ability of the employer to  
44 finance the cost items proposed by each party to the  
45 controversy;

46  
47 (2) Comparison of the wages, hours and working  
48 conditions of the employees involved in the arbitration  
49 proceeding with the wages, hours and working conditions

2 of other employees performing similar services in  
3 public and private employment in this State and, with  
4 respect to proceedings involving teachers, other states  
5 in the United States;

6 (3) The overall compensation presently received by the  
7 employees, including direct salary and wage  
8 compensation, vacation, holidays, life and health  
9 insurance, retirement and all other benefits received;

10 (4) Other factors not confined to the factors set out  
11 in subparagraphs (1) to (3) that are normally and  
12 traditionally taken into consideration in the  
13 resolution of disputes involving similar subjects of  
14 collective bargaining in public education;

15 (5) The need of the employer for qualified employees;

16 (6) Conditions of employment in similar occupations  
17 outside public education;

18 (7) The need to maintain appropriate relationships  
19 between different occupations in public education;

20 (8) The need to establish fair and reasonable  
21 conditions in relation to job qualifications and  
22 responsibilities; and

23 (9) The comfort of the employees and their ability to  
24 perform and work with efficiency, effectiveness and  
25 satisfaction.

26 The results of all arbitration proceedings, recommendations and  
27 awards conducted under this section must be filed with the  
28 Executive Director of the Maine Labor Relations Board  
29 simultaneously with the submission of the recommendations and  
30 award to the parties. In the event the parties settle their  
31 dispute during the arbitration proceeding, the arbitrator or the  
32 chair of the arbitration panel shall submit a report of the  
33 arbitrator's or chair's activities to the Executive Director of  
34 the Maine Labor Relations Board not more than 5 days after the  
35 arbitration proceeding has terminated.

## 44 **SUMMARY**

45 This bill proposes to redefine as "working conditions"  
46 several specific issues that case law has identified as  
47 "educational policy." This modification to the bargaining law  
48 would allow school districts and school employees to negotiate  
49  
50

2        such issues as preparation and planning time, work assignments  
and procedures for the evaluation of teachers.