

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 393

H.P. 295

House of Representatives, January 25, 2005

### An Act To Amend the Laws Governing Bargaining Agents for Public Universities and Colleges

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Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative AUSTIN of Gray.  
Cosponsored by Senator SNOWE-MELLO of Androscoggin and  
Representatives: BRYANT-DESCHENES of Turner, CROSTHWAITE of Ellsworth,  
FLETCHER of Winslow, JOY of Crystal, LANSLEY of Sabattus, MOORE of Standish.

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

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3       **Sec. 1. 26 MRSA §1025, sub-§2, ¶E**, as enacted by PL 1991, c.  
4 166 and as amended by PL 2003, c. 20, Pt. 00, §2 and affected by  
5 §4, is further amended to read:

6  
7       E. The bargaining agent certified by the executive director  
8 or a designee as the exclusive bargaining agent for a unit  
9 is required to represent all the university, academy or  
10 community college employees within the unit without regard  
11 to membership in the organization certified as bargaining  
12 agent, except that any university, academy or community  
13 college employee may present at any time and at any step of  
14 any prescribed grievance procedure then in effect, including  
15 arbitration, that employee's grievance to the employer and  
16 have that grievance adjusted without the intervention of the  
17 bargaining agent, if the adjustment is not inconsistent with  
18 the terms of any collective bargaining agreement then in  
19 effect and the bargaining agent's representative has been  
20 given reasonable opportunity to be present at any meeting of  
21 the parties called for the resolution of that grievance.

22       **Sec. 2. 26 MRSA §§1025-A, 1025-B, 1025-C and 1025-D** are  
23 enacted to read:

24  
25       **§1025-A. Duties of employers and bargaining agents**

26  
27       **1. Employer's duty to recognize employee's exercise of**  
28 **rights; punitive damages.** An employer shall recognize and accept  
29 the exercise by an employee of rights under this chapter and  
30 shall recognize and accept the employee and the employee's  
31 attorney as the grievant and representative for purposes of a  
32 grievance proceeding. If an employer fails or refuses to accept  
33 and process a valid grievance that is pursued by an employee  
34 without representation by a bargaining agent in accordance with  
35 section 1025-B, the employer is liable to the employee for all  
36 damages sustained by the employee as a result of that failure and  
37 the employer may be subject to punitive damages in a civil suit  
38 brought by the employee in Superior Court.

39  
40       **2. Duty to notify employee.** Upon the commencement of an  
41 employee's employment, the employer and the bargaining agent  
42 shall notify the employee of the rights granted to the employee  
43 under this section and sections 1025-B, 1025-C and 1025-D and, to  
44 the extent possible, these rights must be incorporated by  
45 reference in collective bargaining agreements negotiated and  
46 entered into between the bargaining agent and the employer.

47  
48       **3. Bargaining agent's duty to represent employee; punitive**  
49 **damages.** If an employee requests that the bargaining agent

2 represent the employee in a grievance proceeding, the bargaining  
3 agent shall fairly represent the employee at every step of the  
4 grievance process. If a bargaining agent fails or neglects to  
5 fairly represent an employee, the bargaining agent is liable to  
6 the employee for all damages sustained by the employee as a  
7 result of that failure and may be subject to punitive damages in  
8 a civil suit brought by the employee in Superior Court.

10 **§1025-B. Proceeding without representation by bargaining agent**

12 **1. Same rights as bargaining agent.** If an employee elects  
13 to pursue a grievance without the intervention of the bargaining  
14 agent as provided in section 1025, subsection 2, paragraph E:

16 A. The employee has all the rights to present and prosecute  
17 the grievance fully and completely that the bargaining agent  
18 would have under the law and any existing bargaining  
19 agreement; and

20 B. The employer shall accept and process the grievance and  
21 comply with any agreed-upon or ordered resolution of the  
22 grievance as if the grievance had been presented and  
23 processed by the bargaining agent from its inception.

24 **2. Role of bargaining agent.** If an employee elects to  
25 pursue a grievance independently of the bargaining agent as  
26 provided in section 1025, subsection 2, paragraph E:

28 A. The bargaining agent may not take an official position  
29 or in any way communicate an unofficial position to the  
30 employer on the pending grievance unless requested to do so  
31 by the employee;

32 B. The bargaining agent may not in any way hinder or  
33 obstruct the grievance process; and

34 C. The bargaining agent shall assist and cooperate fully  
35 with the employee in all matters relating to the grievance  
36 as reasonably requested by the employee, except that the  
37 bargaining agent is not required to act in a representative  
38 capacity on behalf of the employee in any proceeding  
39 relating to the pending grievance.

40 **§1025-C. Proceedings in which employee initially requests**  
41 **representation by bargaining agent**

42 **1. Failure or refusal to represent employee in grievance.**  
43 If the bargaining agent, citing a grievance's lack of merit,

2 fails or refuses to represent the employee at any step of a  
3 proceeding, the employee may engage, at the employee's expense,  
4 an attorney to assist in prosecuting the grievance to its  
5 conclusion, including arbitration. If the employee prevails in  
6 the grievance, the bargaining agent shall reimburse the employee  
7 for all reasonable costs and expenses incurred by the employee,  
8 including attorney's fees.

9  
10 2. Termination of representative relationship. If, in the  
11 course of a grievance proceeding in which the bargaining agent is  
12 representing the employee, the employee reasonably believes that  
13 the bargaining agent is not acting in good faith, the employee  
14 may terminate the representative relationship with the bargaining  
15 agent and independently pursue resolution of the grievance or  
16 engage, at the employee's expense, an attorney to assist in  
17 prosecuting the grievance to its conclusion, including  
18 arbitration. If the employee prevails in the grievance, the  
19 bargaining agent shall reimburse the employee for all reasonable  
20 costs and expenses incurred by the employee, including attorney's  
21 fees.

22 3. Nonmember request for representation. If, at any step  
23 of a grievance proceeding, an employee who has declined  
24 membership in and has not paid dues to the organization certified  
25 as the bargaining agent requests representation by the bargaining  
26 agent, the bargaining agent shall provide to the employee those  
27 services that the bargaining agent would provide to member  
28 employees under the same circumstances. An employee who requests  
29 representation under this subsection shall pay to the bargaining  
30 agent that amount that the employee would have paid in dues and  
31 fees had the employee joined the organization certified as the  
32 bargaining agent on the effective date of the collective  
33 bargaining agreement or on the actual date of commencement of the  
34 employee's employment, whichever is more recent.

35 4. Rights of employee balanced against interests of  
36 majority of members. In all proceedings under this section, the  
37 bargaining agent shall regard the rights of the employee as  
38 paramount, except that the bargaining agent may, in assessing the  
39 merits of a grievance, consider the potential effect of the  
40 resolution of that particular grievance on the best interests of  
41 a majority of the other members of the bargaining unit.

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43 **§1025-D. Potential conflict of interest**

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45 1. Conflict of interest. To avoid a possible conflict of  
46 interest on the part of the bargaining agent, an employee may  
47 decline representation of the bargaining agent and engage a  
48 private attorney to pursue a grievance if:

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2           A. The principal party adverse to the employee in the  
3           grievance is a person who possesses authority to resolve  
4           that grievance; or

5           B. The principal party adverse to the employee in the  
6           grievance is a dues-paying member of the bargaining agent.

7           2. Reimbursement of costs. If an employee engages a  
8           private attorney to pursue a grievance under this section, the  
9           bargaining agent shall reimburse the employee for all costs and  
10           expenses incurred in pursuing the grievance, including attorney's  
11           fees, whether or not the employee prevails.

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**SUMMARY**

17           The purpose of this bill is to clarify the laws governing  
18           bargaining agents for employees at public universities and  
19           colleges in Maine. Under this bill:

20           1. Public universities and colleges in this State are  
21           required to recognize and accept an employee and the employee's  
22           attorney as the grievant and representative, as well as the  
23           bargaining agent, for purposes of a grievance proceeding;

24           2. If requested by an employee, the bargaining agent is  
25           required to fairly represent the employee at every step of the  
26           grievance process;

27           3. An employee who elects to proceed with a grievance  
28           without representation by the bargaining agent has all of the  
29           rights to pursue the grievance that the bargaining agent would  
30           have had;

31           4. The role of the bargaining agent is set forth, both in  
32           instances in which the employee has requested representation by  
33           the bargaining agent and instances in which the employee has  
34           declined such representation; and

35           5. The issue of potential conflicts of interest is  
36           addressed.