

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2055

H.P. 1439

House of Representatives, December 21, 2007

**An Act To Improve the Elections Process under the Maine Labor
Relations Board Laws**

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

Received by the Clerk of the House on December 19, 2007. Referred to the Committee on Labor pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Speaker CUMMINGS of Portland.
Cosponsored by President EDMONDS of Cumberland and
Representatives: CAIN of Orono, CANAVAN of Waterville, CROCKETT of Augusta,
Senator: MITCHELL of Kennebec.

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

2 **Sec. 1. 26 MRSA §966, sub-§1**, as amended by PL 1975, c. 697, §1, is further
3 amended to read:

4 **1. Bargaining unit standards and determination.** In the event of a dispute between
5 the public employer and an employee or employees as to the appropriateness of a unit for
6 purposes of collective bargaining or between the public employer and an employee or
7 employees as to whether a supervisory or other position is included in the bargaining unit,
8 the executive director or ~~his~~ the executive director's designee shall conduct a hearing to
9 make the determination, except that anyone excepted from the definition of public
10 employee under section 962 may not be included in a bargaining unit. The initial hearing
11 on the petition for election and unit determination proceedings must be scheduled to
12 occur within 15 days of the petition filing date. All proceedings must be scheduled and
13 conducted with the goal of completing the election within 45 days of the petition filing
14 date. The executive director or ~~his~~ the executive director's designee conducting unit
15 determination proceedings shall have the power to may administer oaths and ~~to~~ require by
16 subpoena the attendance and testimony of witnesses; and the production of books, records
17 and other evidence relative or pertinent to the issues represented to them. In determining
18 whether a supervisory position should be excluded from the proposed bargaining unit, the
19 executive director or ~~his~~ the executive director's designee shall consider, among other
20 criteria, ~~if whether~~ the principal functions of the position are characterized by performing
21 such management control duties as scheduling, assigning, overseeing and reviewing the
22 work of subordinate employees, or performing such duties as are distinct and dissimilar
23 from those performed by the employees supervised, or exercising judgment in adjusting
24 grievances, applying other established personnel policies and procedures and in enforcing
25 a collective bargaining agreement or establishing or participating in the establishment of
26 performance standards for subordinate employees and taking corrective measures to
27 implement those standards. Nothing in this chapter is intended to require the exclusion of
28 principals, assistant principals, or other supervisory employees from school system
29 bargaining units ~~which that~~ include teachers and nurses in supervisory positions.

30 **Sec. 2. 26 MRSA §967**, as amended by PL 1991, c. 622, Pt. O, §7, is further
31 amended to read:

32 **§967. Determination of bargaining agent**

33 **1. Recognition of employee's organization.** ~~Any~~ A public employee or public
34 employee organization may file a request for recognition with a public employer alleging
35 that a majority of the public employees in an appropriate bargaining unit wish to be
36 represented for the purpose of collective bargaining between the public employer and the
37 employees' organization. ~~Such~~ This request shall must describe the grouping of jobs or
38 positions ~~which that~~ constitute the unit claimed to be appropriate and shall must include a
39 demonstration of majority support. ~~Such~~ The request for recognition shall must be
40 granted by the public employer, unless the public employer ~~desires that~~ shows good cause
41 to believe that the majority support alleged by the public employee or public employee
42 organization was obtained by fraud or duress, in which case an election must be held to

1 determine whether the public employee or organization represents a majority of the
2 members in the bargaining unit.

3 **2. Elections.** The executive director ~~of the board~~, or a designee, upon receipt of a
4 signed request statement of a public employer alleging that ~~one or more than one~~ public
5 ~~employees~~ employee or public employee ~~organizations have~~ organization has presented
6 to it the public employee a claim to be recognized as the representative of a bargaining
7 unit of public employees or that the public employer has good cause to believe that the
8 majority support alleged by the public employee or the public employee organization was
9 obtained by fraud or duress, or upon receipt of a signed petition of at least 30% of a
10 bargaining unit of public employees that they desire to be represented by an organization,
11 shall conduct a secret ballot election to determine whether the organization represents a
12 majority of the members in the bargaining unit. Such an election may be conducted at
13 suitable work locations or through the United States mail, ~~and as long as the procedures~~
14 ~~adopted and employed must ensure that neither the employee organizations or the~~
15 ~~management representatives involved in the election have access to information that~~
16 would identify a voter.

17 The ballot ~~shall~~ must contain the name of ~~such each~~ organization claiming to be
18 recognized as the representative of a bargaining unit of state employees and that of any
19 other organization showing written proof of at least 10% representation of the public
20 employees within the unit, together with a choice for any public employee to designate
21 that ~~he the public employee~~ does not desire to be represented by any bargaining agent.
22 ~~Where~~ If more than one organization is on the ballot and no one of the 3 or more choices
23 receives a majority vote of the public employees voting, a run-off election ~~shall~~ must be
24 held. The run-off ballot ~~shall~~ must contain the 2 choices ~~which that~~ received the largest
25 and ~~second 2nd~~ largest number of votes. When an organization ~~receives~~ the majority of
26 votes of those voting, the executive director ~~of the board~~ shall certify it as the bargaining
27 agent. The bargaining agent certified as representing a bargaining unit ~~shall~~ must be
28 recognized by the public employer as the sole and exclusive bargaining agent for all of
29 the employees in the bargaining unit unless ~~and until~~ a decertification election by secret
30 ballot ~~shall be~~ is held and the bargaining agent is declared by the executive director ~~of the~~
31 ~~board~~ as not representing a majority of the unit.

32 Whenever 30% of the employees in a certified bargaining unit petition for a bargaining
33 agent to be decertified, the procedures for conducting an election on the question ~~shall~~
34 must be the same as for certification representation as the bargaining agent hereinbefore
35 ~~set forth~~ established in this subsection.

36 No A question concerning representation may not be raised within one year of a
37 certification or attempted certification. ~~Where~~ If there is a valid collective bargaining
38 agreement in effect, ~~no~~ a question concerning unit or representation may not be raised
39 except during the period not more than 90 nor less than 60 days prior to the expiration
40 date of the agreement. ~~The not more than 90 day nor less than 60 day~~ That period prior to
41 the expiration date of an agreement regarding unit determination and representation ~~shall~~
42 does not apply to matters of unit clarification.

43 The bargaining agent certified by the executive director of the board as the exclusive
44 bargaining agent shall ~~be required to~~ represent all the public employees within the unit

1 without regard to membership in the organization certified as bargaining agent, ~~provided~~
2 except that any public employee at any time may present his that public employee's
3 grievance to the public employer and have such that grievance adjusted without the
4 intervention of the bargaining agent; if the adjustment is not inconsistent with the terms
5 of a collective bargaining agreement then in effect and if the bargaining agent's
6 representative has been given reasonable opportunity to be present at any meeting of the
7 parties called for the resolution of such a grievance.

8 **Sec. 3. 26 MRSA §968, sub-§4**, as amended by PL 1993, c. 90, §1, is further
9 amended to read:

10 **4. Review of representation proceedings.** ~~Any party~~ A person aggrieved by any a
11 ruling or determination of the executive director; or the executive director's designee;
12 under sections 966 and 967 may appeal; within 15 days of the announcement of the ruling
13 or determination, except that in the instance of objections to the conduct of an election or
14 challenged ballots the time period is 5 working days, to the ~~Maine Labor Relations Board~~
15 board.

16 Upon receipt of such an appeal, the board shall ~~within a reasonable time hold a hearing~~
17 ~~having first caused 7 days notice in writing of the time and place of the hearing to be~~
18 ~~given to the aggrieved party, the labor organizations or bargaining agent and the public~~
19 ~~employer~~ issue an order to all parties to the proceedings requiring that briefs and
20 supporting evidence from the prior proceedings be submitted to the board within 15 days.
21 The board, for good cause shown, may grant additional time that the board determines
22 necessary. The board shall issue its decision within a reasonable time. The decision of
23 the board is final, except that a party contesting the legality of the decision may raise that
24 issue in defense of a subsequent claim that the party refused to bargain in good faith. If
25 the board determines it necessary to ensure the right of employees to a prompt election,
26 the board may order that the election be held and impound the ballots while the appeal is
27 pending. These hearings proceedings must be conducted in the manner provided in
28 subsection 5, paragraph B. Within a reasonable time after the conclusion of any hearing
29 the board shall make a written decision that must include findings of fact and either
30 affirm or modify the ruling or determination of the executive director and specify the
31 reasons for that action. A copy of that decision must be mailed to the labor organization
32 or bargaining agent or its attorney or other designated representative and the public
33 employer. Decisions of the board made pursuant to this subsection are subject to review
34 by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance
35 with the standards specified in section 972, provided the complaint is filed within 15 days
36 of the date of issuance of the decision. The complaint must be served upon the board and
37 all parties to the board proceeding by certified mail, return receipt requested.

38 **Sec. 4. 26 MRSA §979-E; sub-§1**, as amended by PL 1975, c. 697, §8, is further
39 amended to read:

40 **1. Determination of bargaining unit.** In the event of a dispute between the public
41 employer and an employee or employees as to the appropriateness of a unit for purposes
42 of collective bargaining or between the public employer and an employee or employees
43 as to whether a supervisory or other position is included in the bargaining unit, the
44 executive director or ~~his~~ the executive director's designee shall make the determination,

1 except that anyone excepted from the definition of state employee under section 979-A
2 may not be included in a bargaining unit. The initial hearing on the petition for election
3 and unit determination proceedings must be scheduled to occur within 15 days of the
4 petition filing date. All proceedings must be scheduled and conducted with the goal of
5 completing the election within 45 days of the petition filing date. The executive director
6 or ~~his~~ the executive director's designee conducting unit determination proceedings ~~shall~~
7 ~~have the power to~~ may administer oaths and ~~to~~ require by subpoena the attendance and
8 testimony of witnesses; and the production of books, records and other evidence relative
9 or pertinent to the issues represented to them. In determining whether a supervisory
10 position should be excluded from the proposed bargaining unit, the executive director or
11 ~~his~~ the executive director's designee shall consider, among other criteria, if whether the
12 principal functions of the position are characterized by performing such management
13 control duties as scheduling, assigning, overseeing and reviewing the work of subordinate
14 employees, or performing such duties as are distinct and dissimilar from those performed
15 by the employees supervised, or exercising judgment in adjusting grievances, applying
16 other established personnel policies and procedures and in enforcing a collective
17 bargaining agreement or establishing or participating in the establishment of performance
18 standards for subordinate employees and taking corrective measures to implement those
19 standards.

20 **Sec. 5. 26 MRSA §979-F**, as amended by PL 1981, c. 277, is further amended to
21 read:

22 **§979-F. Determination of bargaining agent**

23 **1. Recognition of state employee organization.** ~~Any~~ A state employee organization
24 may file a request for recognition with the public employer alleging that a majority of the
25 state employees in an appropriate bargaining unit wish to be represented for the purpose
26 of collective bargaining between the public employer and the employees' organization.
27 ~~Such~~ This request shall ~~must~~ describe the grouping of jobs or positions ~~which that~~
28 constitute the unit claimed to be appropriate and ~~shall~~ must include a demonstration of
29 majority support. ~~Such~~ The request for recognition ~~shall~~ must be granted by the public
30 employer unless the public employer ~~desires that~~ shows good cause to believe that the
31 majority support alleged by the public employee organization was obtained by fraud or
32 duress, in which case an election must be held to determine whether the organization
33 represents a majority of the members in the bargaining unit.

34 **2. Elections.** The determination and election of the representative of a bargaining
35 unit of state employees must be conducted pursuant to this subsection.

36 A. The executive director ~~of the board~~ or ~~his~~ the executive director's designee, upon
37 receipt of a signed request statement of a public employer alleging that ~~one or more~~
38 than one state employees employee or state employee ~~organizations~~
39 organization has presented to ~~it~~ the public employer a claim to be recognized as the
40 representative of a bargaining unit of state employees or that the employer has good
41 cause to believe that the majority support alleged by the state employee or state
42 employee organization was obtained by fraud or duress, or upon receipt of a signed
43 petition of at least 30% of a bargaining unit of state employees that they desire to be
44 represented by an organization, shall conduct a secret ballot election to determine

1 whether the organization represents a majority of the members of the bargaining unit.
2 Such an election may be conducted at suitable work locations or through the United
3 States mail ~~provided, nevertheless, that~~ as long as the procedures adopted and
4 employed by the ~~Maine Labor Relations Board shall~~ board maintain the anonymity of
5 the voter from both the employee organizations and the management representatives
6 involved.

7 B. The ballot ~~shall~~ must contain the name of ~~such~~ each organization claiming to be
8 recognized as the representative of a bargaining unit of state employees and that of
9 any other organization showing written proof of at least 10% representation of the
10 state employees within the unit, together with a choice for any state employee to
11 designate that ~~he~~ the employee does not desire to be represented by any bargaining
12 agent. ~~Where~~ If more than one organization is on the ballot and no one of the 3 or
13 more choices receives a majority vote of the state employees voting, a run-off
14 election ~~shall~~ must be held. The run-off ballot ~~shall~~ must contain the 2 choices ~~which~~
15 that received the largest and 2nd largest number of votes. When an organization
16 receives the majority of votes of those voting, the executive director ~~of the board~~
17 shall certify it as the bargaining agent. The bargaining agent certified as representing
18 a bargaining unit ~~shall~~ must be recognized by the public employer as the sole and
19 exclusive bargaining agent for all of the employees in the bargaining unit unless ~~and~~
20 ~~until~~ a decertification election by secret ballot ~~shall be~~ is held and the bargaining
21 agent is declared by the executive director ~~of the board~~ as not representing a majority
22 of the unit.

23 C. Whenever 30% of the employees in a certified bargaining unit petition for a
24 bargaining agent to be decertified, the procedures for conducting an election on the
25 question ~~shall~~ must be the same as for certification representation as the bargaining
26 agent ~~hereinbefore set forth~~ established in this subsection.

27 D. ~~No~~ A question concerning representation may not be raised within one year of a
28 certification or attempted certification. ~~Where~~ If there is a valid collective bargaining
29 agreement in effect, ~~no~~ a question concerning unit or representation may not be raised
30 except during the period not more than 90 nor less than 60 days prior to the
31 expiration date of the agreement. Unit clarification proceedings are not subject to this
32 time limitation and may be brought at any time consistent with section 979-E,
33 subsection 3.

34 E. The bargaining agent certified by the executive director ~~of the board~~ or ~~his~~ the
35 executive director's designee as the exclusive bargaining agent shall ~~be required to~~
36 represent all the public employees within the unit without regard to membership in
37 the organization certified as bargaining agent, ~~provided~~ except that any public
38 employee at any time may present ~~his~~ that public employee's grievance to the public
39 employer and have ~~such~~ that grievance adjusted without the intervention of the
40 bargaining agent, if the adjustment is not inconsistent with the terms of a collective
41 bargaining agreement then in effect and if the bargaining agent's representative has
42 been given reasonable opportunity to be present at any meeting of the parties called
43 for the resolution of such a grievance.

44 **Sec. 6. 26 MRSA §979-G, sub-§2**, as amended by PL 1993, c. 90, §4, is further
45 amended to read:

1 **2. Review of representation proceedings.** Any A person aggrieved by ~~any a~~ ruling
2 or determination of the executive director under sections 979-E and 979-F may appeal,
3 within 15 days of the announcement of the ruling or determination, except that in the
4 instance of objections to the conduct of an election or challenged ballots the time period
5 is 5 working days, to the ~~Maine Labor Relations Board~~ board. Upon receipt of such an
6 appeal, the board shall, ~~within a reasonable time, hold a hearing, having first caused 7~~
7 ~~days' notice in writing of the time and place of such hearing to be given to the aggrieved~~
8 ~~party, the labor organizations or bargaining agent and the public employer. The hearings~~
9 ~~and the procedures established in furtherance thereof must be in accordance with section~~
10 ~~968. Decisions of the board made pursuant to this subsection are subject to review by the~~
11 ~~Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance with~~
12 ~~the standards specified in section 972, if the complaint is filed within 15 days of the date~~
13 ~~of issuance of the decision. The complaint must be served upon the board and all parties~~
14 ~~to the board proceeding by certified mail, return receipt requested. issue an order to all~~
15 ~~parties to the proceedings requiring that briefs and supporting evidence from the prior~~
16 ~~proceedings be submitted to the board within 15 days. The board, for good cause shown,~~
17 ~~may grant additional time that the board determines necessary. The board shall issue its~~
18 ~~decision within a reasonable time. The decision of the board is final, except that a party~~
19 ~~contesting the legality of the decision may raise that issue in defense of a subsequent~~
20 ~~claim that the party refused to bargain in good faith. If the board determines it necessary~~
21 ~~to ensure the right of public employees to a prompt election, the board may order that the~~
22 ~~election be held and impound the ballots while the appeal is pending.~~

23 **Sec. 7. 26 MRSA §1024-A, sub-§4,** as enacted by PL 1979, c. 541, Pt. B, §31, is
24 amended to read:

25 **4. Assignment to bargaining units.** In the event of a dispute over the assignment of
26 jobs or positions to a unit, the executive director or the executive director's designee shall
27 conduct a hearing to examine the community of interest, including work tasks among
28 other factors, and make an assignment to the appropriate statutory bargaining unit set
29 forth in subsection 1, 2 or 3. The initial hearing on the petition for election and unit
30 determination proceedings must be scheduled to occur within 15 days of the petition
31 filing date. All proceedings must be scheduled and conducted with the goal of
32 completing the election within 45 days of the petition filing date.

33 **Sec. 8. 26 MRSA §1025,** as amended by PL 2003, c. 20, Pt. OO, §2 and affected
34 by §4, is further amended to read:

35 **§1025. Determination of bargaining agent**

36 **1. Recognition of employee's organization.** Any An employee organization may
37 file a request for recognition with the university, academy or community colleges
38 alleging that a majority of the university, academy or community college employees in an
39 appropriate bargaining unit as established in section ~~1024~~ 1024-A, wish to be represented
40 for the purpose of collective bargaining between the university, academy or community
41 colleges and the employees' organization. ~~Such~~ This request ~~shall~~ must describe the
42 grouping of jobs or positions ~~which~~ that constitute the unit claimed to be appropriate and
43 ~~shall~~ must include a demonstration of majority support. ~~Such~~ The request for recognition

1 shall ~~must~~ be granted by the university, academy or community colleges unless the
2 university, academy or community colleges ~~desire that~~ show good cause to believe that
3 the majority support alleged by the university, academy or community college employee
4 organization was obtained by fraud or duress, in which case an election must be held to
5 determine whether the organization represents a majority of the members in the
6 bargaining unit. ~~In the event that the request for recognition is granted by~~ If the
7 university, academy or community colleges do not show good cause to believe that the
8 majority support was obtained by fraud or duress, the executive director shall certify the
9 organization so recognized as the bargaining agent.

10 **2. Elections.** The determination and election of the representative of a bargaining
11 unit of university, academy or community college employees must be conducted pursuant
12 to this subsection.

13 A. The executive director ~~of the board~~, upon receipt of a signed ~~request statement~~
14 of the university, academy or community ~~college colleges~~ alleging that ~~one or more~~
15 than one university, academy or community college ~~employees employee or~~
16 ~~employee organizations have~~ organization has presented to ~~it~~ the university, academy
17 or community colleges a claim to be recognized as the representative of a bargaining
18 unit of university, academy or community college employees or that the employer has
19 good cause to believe that the majority support alleged by the university, academy or
20 community college employee or employee organization was obtained by fraud or
21 duress, or upon receipt of a signed petition of at least 30% of a bargaining unit of
22 university, academy or community college employees that they desire to be
23 represented by an organization, shall conduct a secret ballot election to determine
24 whether the organization represents a majority of the members of the bargaining unit.
25 Such an election may be conducted at suitable work locations or through the United
26 States mail, ~~and as long as~~ the procedures adopted and employed ~~must~~ ensure that
27 neither the employee organizations or the management representatives involved in
28 the election have access to information that would identify a voter.

29 B. The ballot ~~shall~~ must contain the name of ~~such~~ each organization claiming to be
30 recognized as the representative of a bargaining unit of university, academy or
31 community college employees and that of any other organization showing written
32 proof of at least 10% representation of the university, academy or community college
33 employees within the unit, together with a choice for any university, academy or
34 community college employee to designate that the employee does not desire to be
35 represented by any bargaining agent. ~~Where~~ If more than one organization is on the
36 ballot, and no one of the 3 or more choices receives a majority vote of the university,
37 academy or community college employees voting, a run-off election ~~shall~~ must be
38 held. The run-off ballot ~~shall~~ must contain the 2 choices ~~which that~~ received the
39 largest and 2nd largest number of votes. When an organization receives the majority
40 of votes of those voting, the executive director shall certify it as the bargaining agent.
41 The bargaining agent certified as representing a bargaining unit ~~shall~~ must be
42 recognized by the university, academy or community colleges as the sole and
43 exclusive bargaining agent for all of the employees in the bargaining unit unless ~~and~~
44 ~~until~~ a decertification election by secret ballot ~~shall be~~ is held and the bargaining
45 agent is declared by the executive director as not representing a majority of the unit.

1 C. Whenever 30% of the employees in a bargaining unit petition for a bargaining
2 agent to be decertified, the procedures for conducting an election on the question
3 shall must be the same as for certification representation as the bargaining agent
4 ~~hereinbefore set forth~~ established in this subsection.

5 D. ~~No~~ A question concerning representation may not be raised within one year of a
6 certification or attempted certification. ~~Where~~ If there is a valid collective bargaining
7 agreement in effect, ~~no~~ a question concerning unit or representation may not be raised
8 except during the period not more than 90 nor less than 60 days prior to the
9 expiration date of the agreement.

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

20 **Sec. 9. 26 MRSA §1028, sub-§2, as amended by PL 1993, c. 90, §6, is further**
21 **amended to read:**

22 **2. Review of representation proceedings.** Any A person aggrieved by any a ruling
23 or determination of the executive director under sections 1024 and 1025 may appeal,
24 within 15 days of the announcement of the ruling or determination, except that in the
25 instance of objections to the conduct of an election or challenged ballots the time period
26 is 5 working days, to the ~~Maine Labor Relations Board~~ board. Upon receipt of such an
27 appeal, the board shall ~~within a reasonable time, hold a hearing, having first caused 7~~
28 ~~days' notice, in writing, of the time and place of the hearings to be given to the aggrieved~~
29 ~~party, the labor organizations or bargaining agent and the public employer. The hearings~~
30 ~~and the procedures established in furtherance thereof must be in accordance with section~~
31 ~~968. Decisions of the board made pursuant to this subsection are subject to review by the~~
32 ~~Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance with~~
33 ~~the standards specified in section 972, if the complaint is filed within 15 days of the date~~
34 ~~of issuance of the decision. The complaint must be served upon the board and all parties~~
35 ~~to the board proceeding by certified mail, return receipt requested. issue an order to all~~
36 ~~parties to the proceedings requiring that briefs and supporting evidence from the prior~~
37 ~~proceedings be submitted to the board within 15 days. The board, for good cause shown,~~
38 ~~may grant additional time that the board determines necessary. The board shall issue its~~
39 ~~decision within a reasonable time. The decision of the board is final, except that a party~~
40 ~~contesting the legality of the decision may raise that issue in defense of a subsequent~~
41 ~~claim that the party refused to bargain in good faith. If the board determines it necessary~~
42 ~~to ensure the right of university, academy or community college employees to a prompt~~
43 ~~election, the board may order that the election be held and impound the ballots while the~~
44 ~~appeal is pending.~~

1 **Sec. 10. 26 MRSA §1286, sub-§1**, as enacted by PL 1983, c. 702, §, is amended
2 to read:

3 **1. Unit determination.** In the event of a dispute between the public employer and
4 an employee or employees over the appropriateness of a unit for purposes of collective
5 bargaining or between the public employer and an employee or employees over whether a
6 supervisory or other position is included in the bargaining unit, the executive director or
7 ~~his~~ the executive director's designee shall make the determination, except that anyone
8 excepted from the definition of judicial employee under section 1282 may not be
9 included in a bargaining unit. The initial hearing on the petition for election and unit
10 determination proceedings must be scheduled to occur within 15 days of the petition
11 filing date. All proceedings must be scheduled and conducted with the goal of
12 completing the election within 45 days of the petition filing date. The executive director
13 or ~~his~~ the executive director's designee conducting unit determination proceedings may
14 administer oaths and require by subpoena the attendance and testimony of witnesses, and
15 the production of books, records and other evidence relative or pertinent to the issues
16 represented to them.

17 **Sec. 11. 26 MRSA §1287**, as enacted by PL 1983, c. 702, is amended to read:

18 **§1287. Determination of bargaining agent**

19 **1. Recognition of judicial employee organization.** ~~Any~~ A judicial employee
20 organization may file a request for recognition with the public employer alleging that a
21 majority of the judicial employees in an appropriate bargaining unit wish to be
22 represented for the purpose of collective bargaining between the public employer and the
23 judicial employees' organization. The request ~~shall~~ must describe the grouping of jobs or
24 positions ~~which~~ that constitute the unit claimed to be appropriate and ~~shall~~ must include a
25 demonstration of majority support. The request for recognition ~~shall~~ must be granted by
26 the public employer, unless the public employer ~~desires that~~ shows good cause to believe
27 that the majority support alleged by the judicial employee organization was obtained by
28 fraud or duress, in which case an election must be held to determine whether the
29 organization represents a majority of the members in the bargaining unit.

30 **2. Elections.** The executive director ~~of the board~~ or ~~his~~ the executive director's
31 designee, upon receipt of a signed request statement of a public employer alleging that
32 ~~one or more than one~~ judicial employees ~~employee or judicial employee organizations~~
33 ~~have~~ organization has presented to it the public employer a claim to be recognized as the
34 representative of a bargaining unit of judicial employees or that the public employer has
35 good cause to believe that the majority support alleged by the judicial employee or
36 judicial employee organization was obtained by fraud or duress, or upon receipt of a
37 signed petition of at least 30% of a bargaining unit of judicial employees that they desire
38 to be represented by an organization, shall conduct a secret ballot election to determine
39 whether the organization represents a majority of the members of the bargaining unit.
40 Such an election may be conducted at suitable work locations or through the United
41 States ~~mail, provided that~~ as long as the procedures adopted and employed by the board
42 ~~shall~~ maintain the anonymity of the voter from both the employee organizations and the
43 management representatives involved.

1 **3. Voting.** The election of the representative of a bargaining unit of judicial
2 employees must be conducted pursuant to this subsection.

3 A. The ballot ~~shall~~ must contain the name of the organization and that of any other
4 organization showing written proof of at least 10% representation of the judicial
5 employees within the unit, together with a choice for any judicial employee to
6 designate that ~~he~~ the employee does not desire to be represented by any bargaining
7 agent. When more than one organization is on the ballot and no one of the 3 or more
8 choices receives a majority vote of the judicial employees voting, a ~~runoff~~ run-off
9 election ~~shall~~ must be held. The ~~runoff~~ run-off ballot ~~shall~~ must contain the 2 choices
10 ~~which~~ that received the largest and 2nd largest number of votes. When an
11 organization receives the majority of votes of those voting, the executive director ~~of~~
12 ~~the board~~ shall certify it as the bargaining agent. The bargaining agent certified as
13 representing a bargaining unit ~~shall~~ must be recognized by the public employer as the
14 sole and exclusive bargaining agent for all of the employees in the bargaining unit,
15 unless ~~and until~~ a decertification election by secret ballot ~~shall be~~ is held and the
16 bargaining agent is declared by the executive director ~~of the board~~ as not representing
17 a majority of the unit.

18 B. Whenever 30% of the employees in a certified bargaining unit petition for a
19 bargaining agent to be decertified, the procedures for conducting an election on the
20 question ~~shall~~ must be the same as for certification representation as a bargaining
21 agent as set forth in this chapter.

22 C. ~~No~~ A question concerning representation may not be raised within one year of a
23 certification or attempted certification. ~~Where~~ If there is a valid collective bargaining
24 agreement in effect, ~~no~~ a question concerning unit or representation may not be
25 raised, except during the period not more than 90 days nor less than 60 days prior to
26 the expiration date of the agreement. Unit clarification proceedings are not subject to
27 this time limitation and may be brought at any time consistent with section 1286,
28 subsection 4.

29 D. The bargaining agent certified by the executive director ~~of the board~~ or ~~his~~ the
30 executive director's designee as the exclusive bargaining agent shall ~~be required to~~
31 represent all the judicial employees within the unit without regard to membership in
32 the organization certified as bargaining agent, ~~provided~~ except that any judicial
33 employee at any time may present ~~his~~ that employee's grievance to the public
34 employer and have that grievance adjusted without the intervention of the bargaining
35 agent, if the adjustment is not inconsistent with the terms of a collective bargaining
36 agreement then in effect and if the bargaining agent's representative has been given
37 reasonable opportunity to be present at any meeting of the parties called for the
38 resolution of that grievance.

39 **Sec. 12. 26 MRSA §1288, sub-§2,** as amended by PL 1993, c. 90, §8, is further
40 amended to read:

41 **2. Review of representation proceedings.** Any A person aggrieved by ~~any~~ a ruling
42 or determination of the executive director under sections 1286 and 1287 may appeal,
43 within 15 days of the announcement of the ruling or determination, except that in the
44 instance of objections to the conduct of an election or challenged ballots the time period

1 is 5 working days, to the ~~Maine Labor Relations Board~~ board. Upon receipt of such an
2 appeal, the board shall, ~~within a reasonable time, hold a hearing, having first caused 7~~
3 ~~days' notice in writing of the time and place of that hearing to be given to the aggrieved~~
4 ~~party, the labor organizations or bargaining agent and the public employer. The hearings~~
5 ~~and the procedures established in furtherance thereof must be in accordance with section~~
6 ~~968. Decisions of the board made pursuant to this subsection are subject to review by the~~
7 ~~Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance with~~
8 ~~the standards specified in section 1292, provided the complaint is filed within 15 days of~~
9 ~~the date of issuance of the decision. The complaint must be served upon the board and all~~
10 ~~parties to the board proceeding by certified mail, return receipt requested. issue an order~~
11 ~~to all parties to the proceedings requiring that briefs and supporting evidence from the~~
12 ~~prior proceedings be submitted to the board within 15 days. The board, for good cause~~
13 ~~shown, may grant additional time that the board determines necessary. The board shall~~
14 ~~issue its decision within a reasonable time. The decision of the board is final, except that~~
15 ~~a party contesting the legality of the decision may raise that issue in defense of a~~
16 ~~subsequent claim that the party refused to bargain in good faith. If the board determines~~
17 ~~it necessary to ensure the right of public employees to a prompt election, the board may~~
18 ~~order that the election be held and impound the ballots while the appeal is pending.~~

19

SUMMARY

20 This bill amends the labor relations laws for municipal public employees, state
21 employees, judicial employees, and employees of the University of Maine System, the
22 ~~Maine Maritime Academy~~ and the Maine Community College System to:

23 1. Require the Executive Director of the Maine Labor Relations Board to conduct a
24 hearing in the event of a dispute over the appropriateness of the composition of the
25 proposed bargaining unit. The hearing must be scheduled to occur within 15 days of the
26 filing of the petition, with the goal of completing the election within 45 days;

27 2. Require an employer to recognize an employee organization that demonstrates
28 majority support by the bargaining unit employees. Current law allows an employer to
29 voluntarily recognize an employee organization or to ask for an election. Under this bill,
30 unless the employer shows good cause to the board to believe that the majority support
31 was obtained by fraud or duress, the employer must recognize the employee organization;
32 and

33 3. Make final the review by the Maine Labor Relations Board of a decision of the
34 executive director. Current law allows a party to appeal the board's decision to the
35 Superior Court. This bill removes that right and also removes the procedural
36 specifications for how the board is to issue its decision.

37 The bill also standardizes the language of these labor relations laws, amending the
38 laws to bring them into conformity with current drafting standards.