

MAINE STATE LEGISLATURE

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STATE LAW OFFICE
MAINE

124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1319

H.P. 922

House of Representatives, March 31, 2009

An Act To Provide Collective Bargaining Protections for Alternative Organizational Structure Employees

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CAIN of Orono.

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

2 **Sec. 1. 20-A MRSA §1464, sub-§5** is enacted to read:

3 **5. Bargaining units of employees of school unions.** For purposes of section 1463,
4 subsection 4, a school union that employed public employees, within this section and the
5 meaning of Title 26, section 962, subsection 6, who were represented by a bargaining
6 agent on the day prior to the operational date of a regional school unit board of directors,
7 is considered to be a school administrative unit.

8 **Sec. 2. PL 2007, c. 240, Pt. XXXX, §36, sub-§2, ¶C,** as enacted by PL 2007, c.
9 668, §42, is amended to read:

10 C. A notice of intent to engage in planning and negotiations with other school
11 administrative units for the purpose of developing a reorganization plan to form an
12 alternative organizational structure in accordance with this paragraph.

13 (1) A school administrative unit may be designated by the commissioner as part
14 of an alternative organizational structure. The commissioner may designate a
15 school administrative unit as part of an alternative organizational structure if the
16 commissioner finds that the proposed organizational structure will result in:

17 (a) Consolidation of system administration;

18 (b) Consolidation of special education administration, transportation
19 administration and administration of business functions including accounting,
20 reporting, payroll, financial management, purchasing insurance and auditing;

21 (c) Adoption of a core curriculum and procedures for standardized testing
22 and assessment aligned with the system of learning results established in
23 Title 20-A, section 6209; and

24 (d) Adoption of consistent school policies and school calendars and a plan
25 for consistent collective bargaining agreements.

26 A plan for an alternative organizational structure may include a collaborative
27 agreement under chapter 114 and must include an interlocal agreement under
28 Title 30-A, chapter 115. The plan must include procedures for conducting a
29 kindergarten through grade 12 budget approval pursuant to subparagraph (2).

30 (2) The budget procedures of members of an alternative organizational structure
31 must conform to the format and referendum procedures set forth in sections 1485
32 and 1486 for regional school units except for the time limits pursuant to section
33 1486, subsection 2. The budget validation referendum for all members of the
34 alternative organizational structure must be conducted on the same day.

35 (3) If, in a reorganization plan to form an alternative organizational structure, or
36 in the subsequent operation of an alternative organizational structure, the school
37 administrative units intend to consolidate any services, programs or functions in
38 which persons are employed who are public employees within the meaning of the
39 Maine Revised Statutes, Title 26, section 962, subsection 6 so that such persons

1 will be employed by the alternative organizational structure, the provisions of
2 section 36-A relating to employment and collective bargaining must be followed.

3 Sec. 3. PL 2007, c. 240, Pt. XXXX, §36-A is enacted to read:

4 **Sec. 36-A. Alternative organizational structures; employment; collective**
5 **bargaining**

6 **1. Transfer of teachers and employees.** Except as limited by paragraph A, all
7 teachers and school employees who are employed by a member school unit prior to the
8 operational date of the alternative organizational structure to provide services to be
9 consolidated must be transferred to and employed by the alternative organizational
10 structure as of the operational date of the alternative organizational structure. Except as
11 otherwise reserved in this section by the member school units, the alternative
12 organizational structure shall assume all of the legal obligations and duties that the
13 member school units owed to their employees who are employed to provide consolidated
14 services, including but not limited to those obligations and duties arising under federal
15 law, state law, collective bargaining agreements and individual employment contracts.
16 Nothing in this section may be construed to decrease or increase the rights and benefits of
17 transferred employees or the employer. The alternative organizational structure shall also
18 maintain and honor any agreements, contracts or policies regarding the rights and benefits
19 of retirees and former employees who were employed to provide consolidated services
20 that were created by a member school unit.

21 A. Teachers or other employees who are employed to provide consolidated services
22 whose employment terminates by application of law or contract or by action of a
23 member school unit before the operational date of the alternative organizational
24 structure may not be transferred.

25 B. Teachers and other employees who are employed to provide consolidated services
26 and who are transferred to the alternative organizational structure prior to the
27 completion of the applicable probationary period for their position must have the
28 length of their probationary period calculated from the date of their most recent date
29 of employment by the member school unit.

30 C. Teachers and other employees who are employed by the member school units for
31 purposes other than to provide consolidated services may not be transferred to the
32 alternative organizational structure and must remain employed by the member school
33 units.

34 **2. Collective bargaining.** This subsection governs collective bargaining.

35 A. On and after the operational date of the alternative organizational structure,
36 teachers and other employees who had been employed by a member school unit to
37 provide services to be consolidated and whose positions were included in a
38 bargaining unit represented by a bargaining agent continue to be included in the same
39 bargaining unit and be represented by the same bargaining agent pending completion
40 of the bargaining agent and bargaining unit merger procedures and bargaining for
41 initial alternative organizational structure-wide collective bargaining agreements, as
42 described in this paragraph. During a transitional period commencing on the

1 operational date of the alternative organizational structure and ending with the
2 completion of bargaining for initial alternative organizational structure-wide
3 collective bargaining agreements, each member school unit continues to have the
4 public employer's obligations, duties, liabilities and rights under the Maine Revised
5 Statutes, Title 26, chapter 9-A with respect to its employees who were transferred to
6 the alternative organizational structure as of the operational date, including the duty
7 and authority on behalf of the alternative organizational structure to enter into
8 collective bargaining agreements that will take effect after the operational date.
9 During the transitional period, each member school unit also has those obligations,
10 duties, liabilities and rights under Title 26, chapter 9-A with respect to any teachers
11 or other school employees who are hired by the alternative organizational structure
12 after the operational date to provide consolidated services to the students of that
13 member school unit. The continuing responsibilities of the member school units
14 during the transitional period include:

15 (1) Continued recognition of all bargaining agents that represented any
16 bargaining units of employees who were employed by a member school unit;

17 (2) Continued observance of all existing collective bargaining agreements
18 between bargaining agents and a member school unit, which agreements must
19 also be assumed by and are binding upon the alternative organizational structure
20 and continue in effect for the remainder of their unexpired terms unless the
21 bargaining agent and member school unit mutually agree otherwise; and

22 (3) Collective bargaining for agreements to succeed the collective bargaining
23 agreements that are in effect on the operational date of the alternative
24 organizational structure and for any interim agreement that may be required
25 thereafter to align the expiration dates of all agreements in each alternative
26 organizational structure-wide bargaining unit to be formed in accordance with
27 this section. Any such agreements that are negotiated by a member school unit
28 and a bargaining agent must also be assumed by and be binding upon the
29 alternative organizational structure, which shall exercise its authority to
30 administer consolidated services and supervise teachers and other school
31 employees who are employed by the alternative organizational structure to
32 provide consolidated services in a manner that is consistent with the terms of the
33 collective bargaining agreements. An agreement that is executed by a member
34 school unit and a bargaining agent after the operational date that applies to
35 teachers and other school employees who are employed to provide consolidated
36 services may not have an expiration date later than August 31, 2012.

37 B. Upon the completion of the transitional period described in this section, all
38 bargaining units of alternative organizational structure employees must be structured
39 on an alternative organizational structure-wide basis. Teachers and other school
40 employees who are employed by the alternative organizational structure to provide
41 consolidated services must be severed from the existing units of teachers and other
42 employees who are employed by each member school unit and merged into units of
43 alternative organizational structure employees who are employed to provide
44 consolidated services. Bargaining units must be structured on an alternative
45 organizational structure-wide basis. Severance from bargaining units of employees in
46 member school units who perform services that have not been consolidated and

1 merger into alternative organizational structure-wide bargaining units are not subject
2 to approval or disapproval of employees. Formation of alternative organizational
3 structure-wide bargaining units must occur in accordance with this paragraph.

4 C. In each alternative organizational structure in which employees are employed to
5 perform consolidated services, there must be one unit of teachers and, to the extent
6 they are on the effective date of this paragraph included in bargaining units, other
7 certified professional employees, excluding principals and other administrators.

8 D. Any additional bargaining units in an alternative organizational structure must be
9 structured as follows.

10 (1) In the initial establishment of such units, units must be structured primarily
11 on the basis of the existing pattern of organization, maintaining the grouping of
12 employee classifications into bargaining units that existed prior to the creation of
13 the alternative organizational structure and avoiding conflicts among different
14 bargaining agents to the extent possible.

15 (2) In the event of a dispute regarding the classifications to be included within an
16 alternative organizational structure-wide bargaining unit, the current bargaining
17 agent or agents or the alternative organizational structure may petition the Maine
18 Labor Relations Board to determine the appropriate unit in accordance with this
19 section and the Maine Revised Statutes, Title 26, section 966, subsections 1 and
20 2.

21 E. When there is the same bargaining agent in all bargaining units that will be
22 merged into an alternative organizational structure-wide bargaining unit, the units
23 must be severed and merged upon completion of the transitional period, and the
24 alternative organizational structure shall recognize the bargaining agent as the
25 representative of the merged unit.

26 F. When all bargaining units that will be severed and merged into an alternative
27 organizational structure-wide bargaining unit are represented by separate local
28 affiliates of the same state labor organization, the units must be severed and merged
29 upon completion of the transitional period. The identity of a single affiliate that will
30 be designated the bargaining agent for the merged unit must be selected by the
31 existing bargaining agents and the state labor organization. Upon completion of the
32 merger and designation of the bargaining agent and notification by the state labor
33 organization to the alternative organizational structure, the alternative organizational
34 structure shall recognize the designated bargaining agent as the representative of
35 employees in the merged unit. If necessary, the parties shall then execute a written
36 amendment to any collective bargaining agreement then in effect to change the name
37 of the bargaining agent to reflect the merger.

38 G. When there are bargaining units that will be severed and merged into an
39 alternative organizational structure-wide bargaining unit in which there are
40 employees who are not represented by any bargaining agent and other employees
41 who are represented either by the same bargaining agent or separate local affiliates of
42 the same state labor organization, the units must be severed and merged upon
43 completion of the transitional period as long as a majority of employees who
44 compose the merged unit were represented by the bargaining agent prior to the

1 merger. The procedures for severance and merger of separate local affiliates of the
2 same state labor organization described in paragraph F must be followed if
3 applicable. If prior to the merger a bargaining agent did not represent a majority of
4 employees who compose the merged unit, a bargaining agent election must be
5 conducted by the Maine Labor Relations Board pursuant to paragraph H.

6 H. When bargaining units with different bargaining agents must be merged into a
7 single alternative organizational structure-wide bargaining unit pursuant to this
8 section, the bargaining agent of the merged bargaining unit must be selected in
9 accordance with the Maine Revised Statutes, Title 26, section 967 except as modified
10 in this section.

11 (1) A petition for an election to determine the bargaining agent must be filed
12 with the Maine Labor Relations Board by any of the current bargaining agents or
13 the alternative organizational structure.

14 (2) The petition must be filed not more than 90 days prior to the expiration date
15 of the agreement having the latest expiration date among the bargaining units that
16 will be merged into the regional school unit-wide bargaining unit, which may not
17 be later than August 31, 2012.

18 (3) The election ballot may contain only the names of the bargaining agents of
19 bargaining units that will be merged into the alternative organizational structure-
20 wide bargaining unit and the choice of "no representative," but no other choices.
21 A showing of interest is not required from any such bargaining agent other than
22 its current status as representative.

23 (4) The obligation to bargain with existing bargaining agents continues from the
24 operational date of the alternative organizational structure until the determination
25 of the bargaining agent of the alternative organizational structure-wide
26 bargaining unit under this section.

27 I. Pursuant to a schedule to be determined by the bargaining agent, but by no later
28 than August 31, 2012, a bargaining agent that has been designated as the future
29 representative of an alternative organizational structure-wide bargaining unit pursuant
30 to this subsection must be recognized by the alternative organizational structure for
31 the purpose of bargaining for an initial collective bargaining agreement for the
32 alternative organizational structure-wide bargaining unit. In the collective bargaining
33 agreement for each alternative organizational structure-wide bargaining unit, the
34 employment relations, policies, practices, salary schedules, hours and working
35 conditions throughout the alternative organizational structure must be made uniform
36 and consistent as soon as practicable. The collective bargaining agreement for each
37 alternative organizational structure-wide bargaining unit is effective as of September
38 1, 2012, unless the bargaining agent and the alternative organizational structure
39 mutually agree otherwise. In the event that the alternative organizational structure
40 and the bargaining agent for the merged alternative organizational structure-wide
41 bargaining units are unable to agree upon an initial alternative organizational
42 structure-wide collective bargaining agreement, they must use the dispute resolution
43 procedures pursuant to the Maine Revised Statutes, Title 26, section 965 to resolve
44 their differences.

1 J. On and after the operational date of the alternative organizational structure, but
2 before the completion of negotiations for a single alternative organizational structure-
3 wide collective bargaining agreement for an alternative organizational structure-wide
4 bargaining unit, the wages, hours and working conditions of an employee of the
5 alternative organizational structure who is in a bargaining unit and who is reassigned
6 to a different position that is in a different bargaining unit but that upon the
7 completion of the merger of bargaining units will be included in the same alternative
8 organizational structure-wide bargaining unit must be determined by the terms of the
9 collective bargaining agreement that applies to the position to which the employee is
10 reassigned, except as provided in this subsection.

11 (1) If the application of the collective bargaining agreement that applies to the
12 position to which the employee is reassigned would cause a reduction in the
13 employee's wage or salary rate, the employee's wage or salary rate must be
14 maintained at the rate the employee was paid immediately prior to the
15 reassignment until the completion of negotiations for a single alternative
16 organizational structure-wide collective bargaining agreement for the alternative
17 organizational structure-wide bargaining unit or the applicable collective
18 bargaining agreement requires a higher wage or salary rate for the employee,
19 whichever occurs sooner.

20 (2) If the application of the existing collective bargaining agreement that applies
21 to the position to which the employee is reassigned would cause a reduction in
22 the amount that is paid by the alternative organizational structure for premiums
23 for health insurance for the employee and the employee's dependents, the
24 alternative organizational structure's payment must be maintained at the amount
25 that was paid immediately prior to the reassignment until the completion of
26 negotiations for a single alternative organizational structure-wide collective
27 bargaining agreement for the alternative organizational structure-wide bargaining
28 unit or the applicable collective bargaining agreement requires a higher payment,
29 whichever occurs sooner.

30 (3) If the application of the existing collective bargaining agreement that applies
31 to the position to which the employee is reassigned provides for coverage under a
32 different health insurance plan, the employee may elect to retain coverage under
33 the health insurance plan in which the employee was enrolled immediately prior
34 to reassignment if the eligibility provisions of the plan permit until the
35 completion of negotiations for a single alternative organizational structure-wide
36 collective bargaining agreement for the alternative organizational structure-wide
37 bargaining unit.

38 (4) During the transitional period, the bargaining unit assignment or assignments
39 of a position that is held by a teacher or other school employee who is employed
40 to provide consolidated services to the students of more than one member school
41 unit must be determined by mutual agreement of the affected member school
42 units and bargaining agents.

SUMMARY

This bill adds provisions to the school reorganization laws regarding employment and collective bargaining for school units that reorganize as alternative organizational structures and that decide to consolidate employment at the alternative organizational structure level to perform services, programs and functions in addition to administration of those services. These provisions are modeled on similar provisions in the laws that apply to regional school units, which were omitted from the portion of the laws that apply to alternative organizational structures. The bill also adds similar employment and collective bargaining provisions for employees of school unions who are now represented by a bargaining agent, which were also omitted from the school reorganization laws.