

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 1351

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H.P. 921

House of Representatives, April 16, 2015

**An Act To Ensure that Membership of Public Employees in Unions  
is Voluntary**

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Submitted by the Department of Labor pursuant to Joint Rule 204.  
Reference to the Committee on Labor, Commerce, Research and Economic Development  
suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative STETKIS of Canaan.  
Cosponsored by Senator VOLK of Cumberland and  
Representatives: AUSTIN of Gray, WARD of Dedham, Senators: BRAKEY of Androscoggin,  
CUSHING of Penobscot.

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

2 **Sec. 1. 20-A MRSA §1464, sub-§2, ¶H**, as amended by PL 2009, c. 580, §6, is  
3 further amended to read:

4 H. When bargaining units with different bargaining agents must be merged into a  
5 single regional school unit-wide bargaining unit ~~pursuant to this section~~, the  
6 bargaining agent of the merged bargaining unit must be selected in accordance with  
7 ~~Title 26, section 967 except as modified in~~ this section.

8 (1) A petition for an election to determine the bargaining agent must be filed  
9 with the Maine Labor Relations Board by any of the current bargaining agents or  
10 the regional school unit.

11 (2) The petition must be filed not more than 90 days prior to the first August 31st  
12 occurring after the 3rd anniversary date of the operational date of the regional  
13 school unit established pursuant to section 1463, subsection 1.

14 (3) The election ballot may contain only the names of the bargaining agents of  
15 bargaining units that will be merged into the regional school unit-wide bargaining  
16 unit and the choice of "no representative," but no other choices. No showing of  
17 interest is required from any such bargaining agent other than its current status as  
18 representative.

19 (4) The obligation to bargain with existing bargaining agents continues from the  
20 operational date established pursuant to section 1463, subsection 1 until the  
21 determination of the bargaining agent of the regional school unit-wide bargaining  
22 unit under this section; but in no event may any collective bargaining agreement  
23 that is executed after the operational date extend beyond the first August 31st  
24 occurring after the 3rd anniversary date of the operational date of the regional  
25 school unit.

26 (5) The Maine Labor Relations Board shall expedite to the extent practicable all  
27 petitions for determination of the bargaining agent in the regional school unit-  
28 wide bargaining unit filed pursuant to this section.

29 (6) The bargaining units must be merged into a regional school unit-wide  
30 bargaining unit as of the date of certification of the results of the election by the  
31 Maine Labor Relations Board or the expiration of the collective bargaining  
32 agreements in the unit, whichever occurs later.

33 (7) Until the first August 31st occurring after the 3rd anniversary date of the  
34 operational date of the regional school unit, existing bargaining agents shall  
35 continue to represent the bargaining units that they represented on the day prior  
36 to the operational date of the regional school unit. If necessary, each bargaining  
37 agent and the regional school unit must negotiate an interim collective bargaining  
38 agreement to expire on the first August 31st occurring after the 3rd anniversary  
39 date of the operational date of the regional school unit.

40 (8) When there are 2 or more bargaining units in which there are employees who  
41 are represented either by the same bargaining agent or by separate local affiliates  
42 of the same state labor organization that will be merged into a regional school

1 unit-wide bargaining unit with one or more other bargaining units pursuant to the  
2 election procedures described in this paragraph, the bargaining units that are  
3 represented either by the same bargaining agent or by separate local affiliates of  
4 the same state labor organization must merge as of the operational date. The  
5 procedures for merger of separate local affiliates of the same state labor  
6 organization described in paragraph E must be followed if applicable.

7 **Sec. 2. 20-A MRSA §1464-A, sub-§2, ¶F**, as enacted by PL 2009, c. 580, §8, is  
8 amended to read:

9 F. When bargaining units with different bargaining agents must be merged into a  
10 single alternative organizational structure-wide bargaining unit ~~pursuant to this~~  
11 ~~section~~, the bargaining agent of the merged bargaining unit must be selected in  
12 accordance with ~~Title 26, section 967~~ ~~except as modified in~~ this section.

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

16 (2) The petition must be filed not more than 90 days prior to the first August 31st  
17 occurring after either the 3rd anniversary date of the operational date of the  
18 alternative organizational structure or the date on which positions are transferred  
19 from member school units to the alternative organizational structure, whichever  
20 is later.

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

26 (4) The obligation to bargain with existing bargaining agents continues from the  
27 operational date of the alternative organizational structure or the date on which  
28 positions are transferred from member school units to the alternative  
29 organizational structure, whichever is later, until the determination of the  
30 bargaining agent of the alternative organizational structure-wide bargaining unit  
31 under this section; but in no event may any collective bargaining agreement that  
32 is executed after the operational date extend beyond the first August 31st  
33 occurring after either the 3rd anniversary date of the operational date of the  
34 alternative organizational structure or the date on which positions are transferred  
35 from member school units to the alternative organizational structure, whichever  
36 is later.

37 (5) The Maine Labor Relations Board shall expedite to the extent practicable all  
38 petitions for determination of the bargaining agent in the alternative  
39 organizational structure filed pursuant to this section.

40 (6) The bargaining units must be merged into an alternative organizational  
41 structure-wide bargaining unit as of the date of certification of the results of the  
42 election by the Maine Labor Relations Board or the expiration of the collective  
43 bargaining agreements in the unit, whichever occurs later.

1 (7) Until the first August 31st occurring after either the 3rd anniversary date of  
2 the operational date of the alternative organizational structure or the date on  
3 which positions are transferred from member school units to the alternative  
4 organizational structure, whichever is later, existing bargaining agents shall  
5 continue to represent the bargaining units that they represented on the day prior  
6 to the operational date of the alternative organizational structure. If necessary,  
7 each bargaining agent and the alternative organizational structure must negotiate  
8 interim collective bargaining agreements to expire the first August 31st occurring  
9 after either the 3rd anniversary date of the operational date of the alternative  
10 organizational structure or the date on which positions are transferred from  
11 member school units to the alternative organizational structure, whichever is  
12 later.

13 (8) When there are 2 or more bargaining units in which there are employees who  
14 are represented either by the same bargaining agent or by separate local affiliates  
15 of the same state labor organization that will be merged into an alternative  
16 organizational structure-wide bargaining unit with one or more other bargaining  
17 units pursuant to the election procedures described in this paragraph, the  
18 bargaining units that are represented either by the same bargaining agent or by  
19 separate local affiliates of the same state labor organization must merge as of the  
20 operational date. The procedures for merger of separate local affiliates of the  
21 same state labor organization described in paragraph D must be followed if  
22 applicable.

23 **Sec. 3. 26 MRSA §962, sub-§2**, as amended by PL 1973, c. 458, §1, is further  
24 amended to read:

25 **2. Bargaining agent.** "Bargaining agent" means any lawful organization,  
26 association or individual representative of such an organization or association ~~which that~~  
27 has as its primary purpose the representation of employees in their employment relations  
28 with employers, ~~and which has been determined by the public employer or by the~~  
29 ~~executive director of the board to be the choice of the majority of the unit as their~~  
30 ~~representative.~~

31 **Sec. 4. 26 MRSA §966, sub-§3**, as enacted by PL 1975, c. 697, §2, is amended to  
32 read:

33 **3. Unit clarification.** ~~Where there is a certified or currently recognized bargaining~~  
34 ~~representative and where~~ When the circumstances surrounding the formation of an  
35 existing bargaining unit are alleged to have changed sufficiently to warrant modification  
36 in the composition of that bargaining unit, any public employer or any recognized ~~or~~  
37 ~~certified~~ bargaining agent may file a petition for a unit clarification ~~provided that if~~  
38 the parties are unable to agree on appropriate modifications ~~and there is no question~~  
39 ~~concerning representation.~~

40 **Sec. 5. 26 MRSA §966, sub-§4**, as amended by PL 1993, c. 38, §1, is further  
41 amended to read:

1           **4. Unit merger; same bargaining agent.** If there is the same certified or currently  
2 ~~recognized bargaining representative of public employees in~~ are multiple bargaining units  
3 with the same public employer, the public employer ~~or certified or recognized bargaining~~  
4 ~~representative~~ may file a petition with the executive director to merge those bargaining  
5 units. Upon the finding of the executive director or the director's designee that the  
6 expanded unit would conform with the requirements set forth in this subsection, the  
7 executive director shall order an election within each bargaining unit to determine  
8 whether a majority of the employees voting in each bargaining unit wish to be within the  
9 expanded unit. The only question on the ballot in a merger election is approval or  
10 disapproval of the proposed merger. ~~The executive director or the director's designee~~  
11 ~~shall certify the bargaining agent for an expanded unit consisting of any bargaining units~~  
12 ~~in which a majority of the employees voting approved the merger.~~

13           A. ~~After an expanded unit is certified, the~~ The parties shall ~~then~~ bargain over  
14 modifications needed in order to provide for the wages, hours and working conditions  
15 or contract grievance arbitration for the newly included positions in any existing  
16 collective bargaining agreement or any collective bargaining agreement being  
17 negotiated.

18           When there is an unexpired collective bargaining agreement in the merged bargaining  
19 unit with a different expiration date from any other collective bargaining agreement  
20 in the merged bargaining unit, all contracts must be honored to their expiration dates  
21 unless mutually agreed to otherwise by the public employer and the bargaining agent.  
22 Collective bargaining agreements may be bargained on an interim basis in any  
23 merged bargaining unit so that all collective bargaining agreements expire on the  
24 same date.

25           ~~B. If a petition has been filed by a competing organization for decertification of the~~  
26 ~~current bargaining agent for any of the bargaining units subject to the merger, then~~  
27 ~~the decertification petition takes precedence over a petition to merge bargaining units.~~

28           C. A public employer ~~or certified or recognized bargaining representative~~ may not  
29 file more than once a year with the executive director to merge or combine  
30 bargaining units for the same bargaining unit.

31           D. The executive director or the director's designee conducting unit merger  
32 proceedings may administer oaths and may require by subpoena the attendance and  
33 testimony of witnesses, the production of books, records and other evidence relating  
34 to the issues presented to the executive director or the director's designee.

35           E. A bargaining unit composed of a majority of supervisors may not merge under  
36 this subsection with any other bargaining unit.

37           F. A bargaining unit composed of teachers may not merge under this subsection with  
38 a bargaining unit of nonprofessional employees.

39           **Sec. 6. 26 MRSA §967**, as amended by PL 1991, c. 622, Pt. O, §7, is repealed.

40           **Sec. 7. 26 MRSA §968, sub-§4**, as amended by PL 1993, c. 90, §1, is further  
41 amended to read:

1           **4. Review of representative proceedings.** Any party aggrieved by any ruling or  
2 determination of the executive director, or the executive director's designee, under  
3 ~~sections section 966 and 967~~ may appeal, within 15 days of the announcement of the  
4 ruling or determination, ~~except that in the instance of objections to the conduct of an~~  
5 ~~election or challenged ballots the time period is 5 working days,~~ to the Maine Labor  
6 Relations Board.

7 Upon receipt of such an appeal, the board shall within a reasonable time hold a hearing  
8 having first caused 7 days notice in writing of the time and place of the hearing to be  
9 given to the aggrieved party, the labor ~~organizations~~ organization or bargaining agent and  
10 the public employer. These hearings must be conducted in the manner provided in  
11 subsection 5, paragraph B. Within a reasonable time after the conclusion of any hearing  
12 the board shall make a written decision that must include findings of fact and either  
13 affirm or modify the ruling or determination of the executive director and specify the  
14 reasons for that action. A copy of that decision must be mailed to the labor organization  
15 or bargaining agent or its attorney or other designated representative and the public  
16 employer. Decisions of the board made pursuant to this subsection are subject to review  
17 by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance  
18 with the standards specified in section 972, ~~provided if~~ provided if the complaint is filed within 15  
19 days of the date of issuance of the decision. The complaint must be served upon the  
20 board and all parties to the board proceeding by certified mail, return receipt requested.

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

23           **1. Bargaining agent.** "Bargaining agent" means any lawful organization,  
24 association or individual representative of such an organization or association ~~which that~~  
25 has as its primary purpose the representation of employees in their employment relations  
26 with employers, ~~and which has been determined by the public employer as defined in~~  
27 ~~subsection 5 or by the executive director of the board to be the choice of the majority of~~  
28 ~~the unit as their representative.~~

29           **Sec. 9. 26 MRSA §979-E, sub-§3,** as enacted by PL 1975, c. 697, §9, is amended  
30 to read:

31           **3. Unit clarification.** ~~Where there is a certified or currently recognized bargaining~~  
32 ~~representative and where~~ When the circumstances surrounding the formation of an  
33 existing bargaining unit are alleged to have changed sufficiently to warrant modification  
34 in the composition of that bargaining unit, any public employer or any recognized ~~or~~  
35 ~~certified~~ bargaining agent may file a petition for a unit clarification, ~~provided that if~~  
36 the parties are unable to agree on appropriate modifications ~~and there is no question~~  
37 ~~concerning representation.~~

38           **Sec. 10. 26 MRSA §979-F,** as amended by PL 1981, c. 277, is repealed.

39           **Sec. 11. 26 MRSA §979-G, sub-§2,** as amended by PL 1993, c. 90, §4, is further  
40 amended to read:

1           **2. Review of representation proceedings.** Any person aggrieved by any ruling or  
2 determination of the executive director under ~~sections~~ section 979-E and 979-F may  
3 appeal, within 15 days of the announcement of the ruling or determination, ~~except that in~~  
4 ~~the instance of objections to the conduct of an election or challenged ballots the time~~  
5 ~~period is 5 working days,~~ to the Maine Labor Relations 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~~ organization or bargaining agent and the public employer.  
9 The hearings and the procedures established in furtherance thereof must be in accordance  
10 with section 968. Decisions of the board made pursuant to this subsection are subject to  
11 review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in  
12 accordance with the standards specified in section 972, if the complaint is filed within 15  
13 days of the date of issuance of the decision. The complaint must be served upon the  
14 board and all parties to the board proceeding by certified mail, return receipt requested.

15           **Sec. 12. 26 MRSA §1022, sub-§1-B,** as enacted by PL 1975, c. 671, §3, is  
16 amended to read:

17           **1-B. Bargaining agent.** "Bargaining agent" means any lawful organization,  
18 association or individual representative of such an organization or association, ~~which that~~  
19 has as one of its primary purposes the representation of employees in their employment  
20 relations with employers ~~and which has been certified by the Executive Director of the~~  
21 ~~Maine Labor Relations Board.~~

22           **Sec. 13. 26 MRSA §1024-A, sub-§7,** as enacted by PL 1979, c. 541, Pt. B, §31,  
23 is amended to read:

24           **7. Unit clarification.** ~~Where there is a certified or currently recognized bargaining~~  
25 ~~representative and where~~ When the circumstances surrounding the formation of an  
26 existing bargaining unit are alleged to have changed sufficiently to warrant modification  
27 in the composition of that bargaining unit, any public employer or any recognized ~~or~~  
28 ~~certified~~ bargaining agent may file a petition for a unit clarification, ~~provided that if~~  
29 the parties are unable to agree on appropriate modifications ~~and there is no question~~  
30 ~~concerning representation.~~

31           **Sec. 14. 26 MRSA §1025,** as amended by PL 2003, c. 20, Pt. OO, §2 and affected  
32 by §4, is repealed.

33           **Sec. 15. 26 MRSA §1027, sub-§3,** as enacted by PL 1975, c. 603, §1, is repealed.

34           **Sec. 16. 26 MRSA §1028, sub-§2,** as amended by PL 2007, c. 695, Pt. C, §17, is  
35 further amended to read:

36           **2. Review of representation proceedings.** Any person aggrieved by any ruling or  
37 determination of the executive director under ~~sections~~ section 1024-A and 1025 may  
38 appeal, within 15 days of the announcement of the ruling or determination, ~~except that in~~  
39 ~~the instance of objections to the conduct of an election or challenged ballots the time~~  
40 ~~period is 5 working days,~~ to the Maine Labor Relations Board. Upon receipt of such an  
41 appeal, the board shall within a reasonable time hold a hearing, having first caused 7



1 days' notice, in writing, of the time and place of the hearings to be given to the aggrieved  
2 party, the labor ~~organizations~~ organization or bargaining agent and the public employer.  
3 The hearings and the procedures established in furtherance thereof must be in accordance  
4 with section 968. Decisions of the board made pursuant to this subsection are subject to  
5 review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in  
6 accordance with the standards specified in section 972, if the complaint is filed within 15  
7 days of the date of issuance of the decision. The complaint must be served upon the  
8 board and all parties to the board proceeding by certified mail, return receipt requested.

9 **Sec. 17. 26 MRSA c. 12-A** is enacted to read:

10 **CHAPTER 12-A**

11 **REPRESENTATION OF PUBLIC SECTOR LABOR CONTRACTS**

12 **§1039. Policy of State**

13 It is the public policy of this State that any contract or agreement entered into  
14 between the State or any subdivision of the State, including, but not limited to, any  
15 county, city, town, municipality or independent district, and a labor organization, under  
16 the terms of which contract or agreement the labor organization is empowered, or  
17 purports to be empowered, to represent any public employee who is not a voluntary  
18 member of that labor organization is unlawful and is declared void.

19 **§1040. Annual determination of bargaining agent**

20 Notwithstanding any law to the contrary, a public employee bargaining unit formed  
21 pursuant to this Title annually shall hold an election to determine or certify the bargaining  
22 agent for that unit.

23 **Sec. 18. Application.** This Act does not affect the validity of any lawful contract  
24 or agreement in existence on the effective date of this Act but does apply to any extension  
25 or renewal of such a contract or agreement.

26 **SUMMARY**

27 This bill amends the State's labor laws to ensure that each public sector union  
28 represents only those public employees who voluntarily are members of that union.

29 This bill also requires a public employee union annually to determine or certify the  
30 bargaining agent for that union.