

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1358

S.P. 466

In Senate, April 6, 2017

### An Act To Improve Public Sector Labor Relations

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator JACKSON of Aroostook.  
Cosponsored by Representative SYLVESTER of Portland and  
Representatives: BATES of Westbrook, FECTEAU of Biddeford.

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

2 **Sec. 1. 26 MRSA §965, sub-§4**, as amended by PL 1975, c. 564, §18, is further  
3 amended to read:

4 **4. Arbitration.** In addition to the 30-day period referred to in subsection 3, the  
5 parties ~~shall~~ have 15 more days, making a total period of 45 days from the submission of  
6 findings and recommendations, in which to make a good faith effort to resolve their  
7 controversy.

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

12 If they do not jointly agree to such an arbitration procedure within 10 days after the end  
13 of ~~said the~~ 45-day period, then either party may, by written notice to the other, request  
14 that their differences be submitted to a board of 3 arbitrators. The bargaining agent and  
15 the public employer shall within 5 days of ~~such the~~ request each select and name one  
16 arbitrator and shall immediately thereafter notify each other in writing of the name and  
17 address of the person so selected. The 2 arbitrators so selected and named shall, within  
18 10 days from ~~such the~~ request, agree upon and select and name a neutral arbitrator. If  
19 either party ~~shall~~ does not select its arbitrator or if the 2 arbitrators ~~shall~~ fail to agree  
20 upon, select and name a neutral arbitrator within ~~said the~~ 10 days, either party may  
21 request the American Arbitration Association to utilize its procedures for the selection of  
22 the neutral arbitrator. As soon as possible after receipt of ~~such the~~ request, the neutral  
23 arbitrator ~~will~~ must be selected in accordance with rules and procedures prescribed by the  
24 American Arbitration Association for making such a selection. The neutral arbitrator so  
25 selected ~~will~~ may not, without the consent of both parties, be the same person who was  
26 selected as mediator pursuant to subsection 2 nor any member of the fact-finding board  
27 selected pursuant to subsection 3. As soon as possible after the selection of the neutral  
28 arbitrator, the 3 arbitrators or if either party ~~shall~~ has not ~~have~~ selected its arbitrator, the 2  
29 arbitrators, as the case may be, shall meet with the parties or their representatives, or  
30 both, forthwith, either jointly or separately, make inquiries and investigations, hold  
31 hearings, or take such other steps as they ~~deem~~ determine appropriate. If the neutral  
32 arbitrator is selected by utilizing the procedures of the American Arbitration Association,  
33 the arbitration proceedings ~~will~~ must be conducted in accordance with the rules and  
34 procedures of the American Arbitration Association. The hearing ~~shall~~ must be informal,  
35 and the rules of evidence prevailing in judicial proceedings ~~shall~~ are not ~~be~~ binding. Any  
36 and all documentary evidence and other data ~~deemed~~ determined relevant by the  
37 arbitrators may be received in evidence. The arbitrators ~~shall~~ have the power to  
38 administer oaths and to require by subpoena the attendance and testimony of witnesses,  
39 the production of books, records and other evidence relative or pertinent to the issues  
40 represented to them for determination.

41 If the controversy is not resolved by the parties themselves, the arbitrators shall proceed  
42 as follows: ~~With respect to a controversy over salaries, pensions and insurance, the~~  
43 ~~arbitrators will recommend terms of settlement and may make findings of fact; such~~  
44 ~~recommendations and findings will be advisory only and will be made, if reasonably~~

1 possible, within 30 days after the selection of the neutral arbitrator; the arbitrators may in  
2 their discretion, make such recommendations and findings public, and either party may  
3 make such recommendations and findings public if agreement is not reached with respect  
4 to such findings and recommendations within 10 days after their receipt from the  
5 arbitrators; with respect to a controversy over all subjects ~~other than salaries, pensions~~  
6 ~~and insurance~~, the arbitrators shall make determinations with respect thereto if reasonably  
7 possible within 30 days after the selection of the neutral arbitrator; such determinations  
8 may be made public by the arbitrators or either party; and if made by a majority of the  
9 arbitrators, such determinations ~~will be~~ are binding on both parties and the parties ~~will~~  
10 shall enter an agreement or take whatever other action that may be appropriate to carry  
11 out and effectuate such binding determinations; and such determinations ~~will be~~ are  
12 subject to review by the Superior Court in the manner specified by section 972. The  
13 results of all arbitration proceedings, recommendations and awards conducted under this  
14 section ~~shall~~ must be filed with the Maine Labor Relations Board at the offices of its  
15 executive director simultaneously with the submission of the recommendations and award  
16 to the parties. In the event the parties settle their dispute during the arbitration  
17 proceeding, the arbitrator or the ~~chairman~~ chair of the arbitration panel ~~will~~ shall submit a  
18 report of ~~his~~ the arbitrator's or chair's activities to the Executive Director of the Maine  
19 Labor Relations Board not more than 5 days after the arbitration proceeding has  
20 terminated.

21 **Sec. 2. 26 MRSA §979-D, sub-§4, ¶D**, as enacted by PL 1973, c. 774, is  
22 amended to read:

23 D. With respect to controversies over ~~salaries, pensions and insurance~~, the arbitrator  
24 ~~will~~ shall recommend terms of settlement and may make findings of fact. Such  
25 recommendations and findings ~~shall be~~ are advisory and ~~shall~~ are not be binding upon  
26 the parties. The determination by the arbitrator on all other issues ~~shall be~~ is final and  
27 binding on the parties.

28 **Sec. 3. 26 MRSA §1026, sub-§4, ¶B**, as amended by PL 1983, c. 153, §2, is  
29 further amended to read:

30 B. If the controversy is not resolved by the parties themselves, the arbitrators shall  
31 proceed as follows: ~~With respect to a controversy over salaries, pensions and~~  
32 ~~insurance, the arbitrators will recommend terms of settlement and may make findings~~  
33 ~~of fact; such recommendations and findings will be advisory only and will be made,~~  
34 ~~if reasonably possible, within 60 days after the selection of the neutral arbitrator. The~~  
35 ~~arbitrators may in their discretion make such recommendations and findings public,~~  
36 ~~and either party may make such recommendations and findings public if agreement is~~  
37 ~~not reached with respect to such findings and recommendations within 10 days after~~  
38 ~~their receipt from the arbitrators. With~~ with respect to a controversy over all subjects  
39 ~~other than salaries, pensions and insurance~~, the arbitrators shall make determinations  
40 with respect thereto if reasonably possible within 60 days after the selection of the  
41 neutral arbitrator. Such determinations may be made public by the arbitrators or  
42 either party and if made by a majority of the arbitrators, such determinations ~~will be~~  
43 are binding on both parties and the parties ~~will~~ shall enter an agreement or take  
44 whatever other action that may be appropriate to carry out and effectuate such  
45 binding determinations, and such determinations ~~will be~~ are subject to review by the

1 Superior Court in the manner specified by section 1033. The results of all arbitration  
2 proceedings, recommendations and awards conducted under this section ~~shall~~ must be  
3 filed with the Maine Labor Relations Board at the offices of its executive director  
4 simultaneously with the submission of the recommendations and award to the parties.  
5 In the event the parties settle their dispute during the arbitration proceeding, the  
6 arbitrator or the ~~chairman~~ chair of the arbitration panel ~~will~~ shall submit a report of  
7 ~~his~~ the arbitrator's or chair's activities to the Executive Director of the Maine Labor  
8 Relations Board not more than 5 days after the arbitration proceeding has terminated.

9 **Sec. 4. 26 MRSA §1285, sub-§4**, as enacted by PL 1983, c. 702, is amended to  
10 read:

11 **4. Arbitration.**

12 A. In addition to the 30-day period referred to in subsection 3, the parties ~~shall~~ have  
13 15 more days, making a total of 45 days from the submission of findings and  
14 recommendations, in which to make a good faith effort to resolve their controversy.

15 B. If the parties have not resolved their controversy by the end of that 45-day period,  
16 either party may petition the board to initiate compulsory final and binding arbitration  
17 of the negotiations' impasse. On receipt of the petition, the executive director of the  
18 board shall investigate to determine if an impasse has been reached. If ~~he~~ the  
19 executive director so determines, ~~he~~ the executive director shall issue an order  
20 requiring arbitration and requesting the parties to select one or more arbitrators. If  
21 the parties, within 10 days after the issuance of the order, have not selected an  
22 arbitrator or an arbitration panel, the board shall then order each party to select one  
23 arbitrator and, if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the  
24 board shall submit a list from which the parties may alternately strike names until a  
25 single name is left, who ~~shall~~ must be appointed by the board as arbitrator. In  
26 reaching a decision under this paragraph, the arbitrator shall consider the following  
27 factors:

28 (1) The interests and welfare of the public and the financial ability of State  
29 Government to finance the cost items proposed by each party to the impasse;

30 (2) Comparison of the wages, hours and working conditions of the employees  
31 involved in the arbitration proceeding with the wages, hours and working  
32 conditions of other employees performing similar services in the executive and  
33 legislative branches of government and in public and private employment in  
34 other jurisdictions competing in the same labor market;

35 (3) The overall compensation presently received by the employees, including  
36 direct wage compensation, vacation, holidays and excused time, insurance and  
37 pensions, medical and hospitalization benefits, the continuity and stability of  
38 employment, and all other benefits received;

39 (4) Such other factors not confined to the foregoing, which are normally and  
40 traditionally taken into consideration in the determination of wages, hours and  
41 working conditions through voluntary collective bargaining, mediation, fact-  
42 finding, arbitration or otherwise between the parties, in the public service or in  
43 private employment, including the average Consumer Price Index;

- 1 (5) The need of the Judicial Department for qualified employees;
- 2 (6) Conditions of employment in similar occupations outside State Government;
- 3 (7) The need to maintain appropriate relationships between different occupations
- 4 in the Judicial Department; and
- 5 (8) The need to establish fair and reasonable conditions in relation to job
- 6 qualifications and responsibilities.

7 With respect to controversies over ~~salaries~~, pensions and insurance, the arbitrator shall  
8 recommend terms of settlement and may make findings of fact. The recommendations  
9 and findings ~~shall be~~ are advisory and ~~shall be~~ are not ~~be~~ binding upon the parties. The  
10 determination by the arbitrator on all other issues ~~shall be~~ is final and binding on the  
11 parties.

12 Any hearing ~~shall~~ must be informal and the rules of evidence for judicial proceedings  
13 ~~shall are~~ are not ~~be~~ binding. Any documentary evidence and other information ~~deemed~~  
14 determined relevant by the arbitrator may be received in evidence. The arbitrator may  
15 administer oaths and require by subpoena attendance and testimony of witnesses and  
16 production of books and records and other evidence relating to the issues presented. The  
17 arbitrator ~~shall have~~ has a period of 30 days from the termination of the hearing in which  
18 to submit ~~his a~~ report to the parties and to the board, unless that time limitation is  
19 extended by the executive director.

20 **Sec. 5. 26 MRSA §1285, sub-§5, ¶E**, as enacted by PL 1983, c. 702, is amended  
21 to read:

22 E. In reaching a decision, the mediator-arbitrator shall consider the factors specified  
23 in section 1285, subsection 4. With respect to controversies over ~~salaries~~, pensions  
24 and insurance, the mediator-arbitrator shall recommend terms of settlement and may  
25 make findings of fact. Such recommendations and findings ~~shall be~~ are advisory and  
26 ~~shall are~~ are not ~~be~~ binding on the parties. The determination of the mediator-arbitrator  
27 on all other issues ~~shall be~~ is final and binding on the parties.

28 **SUMMARY**

29 This bill:

30 1. Amends the labor relations laws governing municipal public employees and  
31 University of Maine System employees to provide that determinations by arbitrators with  
32 respect to controversies over all subjects, including salaries, pensions and insurance, are  
33 final and binding on the parties;

34 2. Amends the labor relations laws governing state employees to provide that, with  
35 respect to controversies over salaries, an arbitrator's determinations are final and binding  
36 on the parties; and

37 3. Amends the labor relations laws governing judicial employees to provide that an  
38 arbitrator's determinations with respect to controversies over all subjects, including  
39 salaries, pensions and insurance, are final and binding on the parties and that, with respect

1 to controversies over salaries, determinations by mediator-arbitrators are final and  
2 binding on the parties.