

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 677

S.P. 264

In Senate, March 4, 2021

**An Act To Improve Public Sector Labor Relations by Amending the
Laws Governing Arbitration under Certain Public Employees
Labor Relations Laws**

Received by the Secretary of the Senate on March 2, 2021. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Speaker FECTEAU of Biddeford and
Senators: LIBBY of Androscoggin, MIRAMANT of Knox, RAFFERTY of York,
Representatives: CUDDY of Winterport, PAULHUS of Bath.

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 parties
5 ~~shall~~ have 15 more days, making a total period of 45 days from the submission of findings
6 and recommendations, in which to make a good faith effort to resolve their controversy.

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

11 If they do not jointly agree to such an arbitration procedure within 10 days after the end of
12 ~~said~~ the 45-day period, then either party may, by written notice to the other, request that
13 their differences be submitted to a board of 3 arbitrators. The bargaining agent and the
14 public employer shall within 5 days of ~~such~~ the request each select and name one arbitrator
15 and shall immediately thereafter notify each other in writing of the name and address of the
16 person so selected. The 2 arbitrators so selected and named shall, within 10 days from ~~such~~
17 the request, agree upon and select and name a neutral arbitrator from the panel of arbitrators
18 established in accordance with subsection 4-A. ~~If either party shall not select its arbitrator~~
19 ~~or if the 2 arbitrators shall fail to agree upon, select and name a neutral arbitrator within~~
20 ~~said 10 days, either party may request the American Arbitration Association to utilize its~~
21 ~~procedures for the selection of the neutral arbitrator. As soon as possible after receipt of~~
22 ~~such request, the neutral arbitrator will be selected in accordance with rules and procedures~~
23 ~~prescribed by the American Arbitration Association for making such selection. If the 2~~
24 ~~arbitrators cannot in 10 days select a neutral arbitrator, the executive director shall appoint~~
25 ~~the neutral arbitrator from the panel of arbitrators established in accordance with subsection~~
26 ~~4-A.~~ The neutral arbitrator so selected will may not, without the consent of both parties,
27 be the same person who was selected as mediator pursuant to subsection 2 nor any member
28 of the fact-finding board selected pursuant to subsection 3. As soon as possible after the
29 selection of the neutral arbitrator, the 3 arbitrators ~~or if either party shall not have selected~~
30 ~~its arbitrator, the 2 arbitrators, as the case may be,~~ shall meet with the parties or their
31 representatives, or both, forthwith, either jointly or separately, make inquiries and
32 investigations, hold hearings, or take such other steps as they ~~deem~~ determine appropriate.
33 ~~If the neutral arbitrator is selected by utilizing the procedures of the American Arbitration~~
34 ~~Association, the arbitration proceedings will be conducted in accordance with the rules and~~
35 ~~procedures of the American Arbitration Association. The hearing shall must be informal,~~
36 ~~and the rules of evidence prevailing in judicial proceedings shall are not be binding. Any~~
37 ~~and all documentary evidence and other data deemed determined relevant by the arbitrators~~
38 ~~may be received in evidence. The arbitrators shall have the power to administer oaths and~~
39 ~~to require by subpoena the attendance and testimony of witnesses, the production of books,~~
40 ~~records and other evidence relative or pertinent to the issues represented to them for~~
41 ~~determination.~~

42 If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as
43 follows: ~~With respect to a controversy over salaries, pensions and insurance, the arbitrators~~
44 ~~will recommend terms of settlement and may make findings of fact; such recommendations~~
45 ~~and findings will be advisory only and will be made, if reasonably possible, within 30 days~~

1 after the selection of the neutral arbitrator; the arbitrators may in their discretion, make such
2 recommendations and findings public, and either party may make such recommendations
3 and findings public if agreement is not reached with respect to such findings and
4 recommendations within 10 days after their receipt from the arbitrators; with respect to a
5 controversy over all subjects other than salaries, pensions and insurance, the arbitrators
6 shall make determinations with respect thereto if reasonably possible within 30 days after
7 the selection of the neutral arbitrator; such determinations may be made public by the
8 arbitrators or either party; and if made by a majority of the arbitrators, such determinations
9 will be are binding on both parties and the parties will shall enter an agreement or take
10 whatever other action that may be appropriate to carry out and effectuate such binding
11 determinations; and such determinations will be are subject to review by the Superior Court
12 in the manner specified by section 972. Notwithstanding section 964, subsection 2, if the
13 public employer fails to enter into an agreement or take whatever other action may be
14 appropriate to carry out and effectuate binding determinations made by arbitrators pursuant
15 to this subsection, the public employees represented by the bargaining agent, except for
16 public employees whose duties include protecting public safety, may engage in a strike.
17 The results of all arbitration proceedings, recommendations and awards conducted under
18 this section shall must be filed with the Maine Labor Relations Board at the offices of its
19 executive director simultaneously with the submission of the recommendations and award
20 to the parties. In the event the parties settle their dispute during the arbitration proceeding,
21 the arbitrator or the chairman chair of the arbitration panel will shall submit a report of his
22 the arbitrator's or chair's activities to the Executive Director of the Maine Labor Relations
23 Board not more than 5 days after the arbitration proceeding has terminated.

24 In reaching a decision under this subsection, the arbitrator shall consider the following:

25 A. The interests and welfare of the public and the financial ability of the public
26 employer to finance the cost items proposed by each party to the impasse;

27 B. A comparison of the wages, hours and working conditions of the employees
28 involved in the arbitration proceeding with the wages, hours and working conditions
29 of other employees performing similar services in public and private employment in
30 other jurisdictions competing in the same labor market;

31 C. The overall compensation presently received by the employees including direct
32 wage compensation, vacation, holidays and excused time, insurance and pensions,
33 medical and hospitalization benefits, the continuity and stability of employment and
34 all other benefits received;

35 D. Factors other than those specified in paragraphs A to C that are normally and
36 traditionally taken into consideration in the determination of wages, hours and working
37 conditions through voluntary collective bargaining, mediation, fact-finding, arbitration
38 or otherwise between the parties, in public or private employment, including the
39 average Consumer Price Index;

40 E. The need of the public employer for qualified employees;

41 F. Conditions of employment in similar occupations outside public employment;

42 G. The need to maintain appropriate relationships between different occupations in
43 public employment; and

1 H. The need to establish fair and reasonable conditions in relation to job qualifications
2 and responsibilities.

3 Cost items in a collective bargaining agreement that is arrived at through arbitration in
4 accordance with this subsection may not be submitted for inclusion in the municipality's
5 operating budget for the fiscal year in which the agreement is ratified, but must be
6 submitted for inclusion in the municipality's operating budget for the fiscal year following
7 the fiscal year in which the agreement is ratified.

8 **Sec. 2. 26 MRSA §965, sub-§4-A** is enacted to read:

9 **4-A. Panel of arbitrators.** The Governor shall appoint a panel of arbitrators,
10 consisting of no fewer than 5 nor more than 10 impartial arbitrators, to serve as impartial
11 arbitrators of the interests of the public in the settlement of disputes between employers
12 and employees or their representatives. The board shall supply to the Governor nominations
13 for appointment to the panel. The arbitrators must reside in the State and be neutral and
14 unbiased. The board shall adopt rules governing the necessary qualifications for
15 appointment to the panel and allowable compensation for panel members.

16 **Sec. 3. 26 MRSA §979-D, sub-§4, ¶B,** as enacted by PL 1973, c. 774, is amended
17 to read:

18 B. If the parties have not resolved their controversy by the end of ~~said~~ the 45-day
19 period, either party may petition the board to initiate compulsory final and binding
20 arbitration of the negotiations impasse. On receipt of the petition, the executive
21 director of the board shall investigate to determine if an impasse has been reached. If
22 ~~he so~~ the executive director determines that an impasse has been reached, ~~he~~ the
23 executive director shall issue an order requiring arbitration and requesting the parties
24 to select ~~one or more~~ arbitrators. ~~If the parties within 10 days after the issuance of the~~
25 ~~order have not selected an arbitrator or a Board of Arbitration, the~~ The board shall then
26 order each party to select one arbitrator, and if these 2 arbitrators cannot in 5 days select
27 a 3rd neutral arbitrator, ~~the board shall submit a list from which the parties may~~
28 ~~alternately strike names until a single name is left, who shall be appointed by the board~~
29 ~~as arbitrator~~ the 2 arbitrators so selected shall select a 3rd neutral arbitrator from the
30 panel of arbitrators established in accordance with section 965, subsection 4-A. If the
31 2 arbitrators cannot in 10 days select a neutral arbitrator, the executive director shall
32 appoint the neutral arbitrator from the panel of arbitrators established in accordance
33 with section 965, subsection 4-A.

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

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

41 **Sec. 5. 26 MRSA §979-D, sub-§4, ¶F** is enacted to read:

42 F. Notwithstanding section 979-C, subsection 2, if the public employer fails to enter
43 into an agreement or take whatever other action may be appropriate to carry out and
44 effectuate binding determinations made by arbitrators pursuant to this subsection, the

1 state or legislative employees represented by the bargaining agent, except for
2 employees whose duties include protecting public safety, may engage in a strike.

3 **Sec. 6. 26 MRSA §979-D, sub-§4, ¶G** is enacted to read:

4 G. Cost items in a collective bargaining agreement arrived at through arbitration in
5 accordance with this subsection:

6 (1) May not be submitted for inclusion in the Governor's operating budget for the
7 fiscal year in which the agreement is ratified; and

8 (2) Must be submitted for inclusion in the Governor's operating budget for the
9 fiscal year following the fiscal year in which the agreement is ratified.

10 **Sec. 7. 26 MRSA §1026, sub-§4, ¶A**, as corrected by RR 2009, c. 2, §76, is
11 amended to read:

12 A. At any time after participating in the procedures set forth in subsections 2 and 3,
13 either party, or the parties jointly, may petition the board to initiate arbitration
14 procedures. On receipt of the petition, the executive director shall within a reasonable
15 time determine if an impasse has been reached; the determination must be made
16 administratively, with or without hearing, and is not subject to appeal. If the executive
17 director so determines, the executive director shall issue an order requiring arbitration
18 and requesting the parties to select one or more arbitrators. ~~If the parties, within 10~~
19 ~~days after the issuance of the order, have not selected an arbitrator or a Board of~~
20 ~~Arbitration, the executive director shall then order each party to select one arbitrator~~
21 ~~and the 2 arbitrators so selected shall to select a 3rd neutral arbitrator from the panel of~~
22 ~~arbitrators established in accordance with section 965, subsection 4-A. If the 2~~
23 ~~arbitrators cannot in 5 days select a 3rd neutral arbitrator, the executive director shall~~
24 ~~submit identical lists to the parties of 5 or more qualified arbitrators of recognized~~
25 ~~experience and competence appoint the 3rd neutral arbitrator from the panel of~~
26 ~~arbitrators established in accordance with section 965, subsection 4-A. Each party has~~
27 ~~7 days from the submission of the list to delete any names objected to, number the~~
28 ~~remaining names indicating the order of preference and return the list to the executive~~
29 ~~director. In the event a party does not return the list within the time specified, all parties~~
30 ~~named therein are deemed acceptable. From the arbitrators who have been approved~~
31 ~~by both parties and pursuant to the order of mutual preference, the executive director~~
32 ~~shall appoint a neutral arbitrator. If the parties fail to agree upon any arbitrators named,~~
33 ~~or if for any other reason the appointment cannot be made from the initial list, the~~
34 ~~executive director shall then submit a 2nd list of 5 or more additional qualified~~
35 ~~arbitrators of recognized experience and competence from which they shall strike~~
36 ~~names with the determination as to which party shall strike first being determined by a~~
37 ~~random technique administered through the Executive Director of the Maine Labor~~
38 ~~Relations Board. Thereafter, the parties shall alternately strike names from the list of~~
39 ~~names submitted, provided that, when the list is reduced to 4 names, the 2nd from the~~
40 ~~last party to strike shall be entitled to strike 2 names simultaneously, after which the~~
41 ~~last party to strike shall so strike one name from the then 2 remaining names, such that~~
42 ~~the then remaining name shall identify the person who must then be appointed by the~~
43 ~~executive director as the neutral arbitrator.~~

44 Nothing in this subsection may be construed as preventing the parties, as an alternative
45 to procedures in the preceding paragraph, from jointly agreeing to elect arbitration from

1 either the Federal Mediation and Conciliation Service or the American Arbitration
2 Association, under the procedures, rules and regulations of that association, provided
3 that these procedures, rules and regulations are not inconsistent with paragraphs B and
4 C.

5 **Sec. 8. 26 MRSA §1026, sub-§4, ¶B**, as amended by PL 1983, c. 153, §2, is further
6 amended to read:

7 B. If the controversy is not resolved by the parties themselves, the arbitrators shall
8 proceed as follows: ~~With respect to a controversy over salaries, pensions and insurance,~~
9 ~~the arbitrators will recommend terms of settlement and may make findings of fact; such~~
10 ~~recommendations and findings will be advisory only and will be made, if reasonably~~
11 ~~possible, within 60 days after the selection of the neutral arbitrator. The arbitrators may~~
12 ~~in their discretion make such recommendations and findings public, and either party~~
13 ~~may make such recommendations and findings public if agreement is not reached with~~
14 ~~respect to such findings and recommendations within 10 days after their receipt from~~
15 ~~the arbitrators. With with respect to a controversy over all subjects ~~other than salaries,~~~~
16 ~~pensions and insurance,~~ the arbitrators shall make determinations with respect thereto
17 if reasonably possible within 60 days after the selection of the neutral arbitrator. Such
18 determinations may be made public by the arbitrators or either party and if made by a
19 majority of the arbitrators, such determinations ~~will be~~ are binding on both parties and
20 the parties ~~will~~ shall enter an agreement or take whatever other action that may be
21 appropriate to carry out and effectuate such binding determinations, and such
22 determinations ~~will be~~ are subject to review by the Superior Court in the manner
23 specified by section 1033. The results of all arbitration proceedings, recommendations
24 and awards conducted under this section ~~shall~~ must be filed with the Maine Labor
25 Relations Board at the offices of its executive director simultaneously with the
26 submission of the recommendations and award to the parties. In the event the parties
27 settle their dispute during the arbitration proceeding, the arbitrator or the ~~chairman~~
28 chair of the arbitration panel ~~will~~ shall submit a report of ~~his~~ the arbitrator's or chair's
29 activities to the Executive Director of the Maine Labor Relations Board not more than
30 5 days after the arbitration proceeding has terminated.

31 **Sec. 9. 26 MRSA §1026, sub-§4, ¶D** is enacted to read:

32 D. Notwithstanding section 1027, subsection 2, if the university, academy or
33 community college fails to enter into an agreement or take whatever other action may
34 be appropriate to carry out and effectuate binding determinations made by arbitrators
35 pursuant to this subsection, the university, academy or community college employees
36 represented by the bargaining agent, except for employees whose duties include
37 protecting public safety, may engage in a strike.

38 **Sec. 10. 26 MRSA §1026, sub-§4, ¶E** is enacted to read:

39 E. Cost items in a collective bargaining agreement arrived at through arbitration in
40 accordance with this subsection:

41 (1) May not be submitted for inclusion in the Governor's operating budget for the
42 fiscal year in which the agreement is ratified; and

43 (2) Must be submitted for inclusion in the Governor's operating budget for the
44 fiscal year following the fiscal year in which the agreement is ratified.

1 **Sec. 11. 26 MRSA §1285, sub-§4**, as enacted by PL 1983, c. 702, is amended to
2 read:

3 **4. Arbitration.**

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

7 B. If the parties have not resolved their controversy by the end of that 45-day period,
8 either party may petition the board to initiate compulsory final and binding arbitration
9 of the negotiations' impasse. On receipt of the petition, the executive director of the
10 board shall investigate to determine if an impasse has been reached. ~~If he~~ the executive
11 director so determines, ~~he~~ the executive director shall issue an order requiring
12 arbitration and requesting ~~the parties to select one or more arbitrators.~~ If the parties,
13 within 10 days after the issuance of the order, have not selected an arbitrator or an
14 arbitration panel, the board shall then order each party to select one arbitrator and, if
15 these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the board shall submit
16 a list from which the parties may alternately strike names until a single name is left,
17 who shall be appointed by the board as arbitrator the 2 arbitrators so selected to select
18 a 3rd neutral arbitrator from the panel of arbitrators established in accordance with
19 section 965, subsection 4-A. If the 2 arbitrators cannot in 5 days select a 3rd neutral
20 arbitrator, the executive director shall appoint the 3rd neutral arbitrator from the panel
21 of arbitrators established in accordance with section 965, subsection 4-A. In reaching
22 a decision under this paragraph, the arbitrator shall consider the following factors:

- 23 (1) The interests and welfare of the public and the financial ability of State
24 Government to finance the cost items proposed by each party to the impasse;
- 25 (2) Comparison of the wages, hours and working conditions of the employees
26 involved in the arbitration proceeding with the wages, hours and working
27 conditions of other employees performing similar services in the executive and
28 legislative branches of government and in public and private employment in other
29 jurisdictions competing in the same labor market;
- 30 (3) The overall compensation presently received by the employees, including
31 direct wage compensation, vacation, holidays and excused time, insurance and
32 pensions, medical and hospitalization benefits, the continuity and stability of
33 employment, and all other benefits received;
- 34 (4) Such other factors not confined to the foregoing, which are normally and
35 traditionally taken into consideration in the determination of wages, hours and
36 working conditions through voluntary collective bargaining, mediation, fact-
37 finding, arbitration or otherwise between the parties, in the public service or in
38 private employment, including the average Consumer Price Index;
- 39 (5) The need of the Judicial Department for qualified employees;
- 40 (6) Conditions of employment in similar occupations outside State Government;
- 41 (7) The need to maintain appropriate relationships between different occupations
42 in the Judicial Department; and

1 (8) The need to establish fair and reasonable conditions in relation to job
2 qualifications and responsibilities.

3 C. Cost items in a collective bargaining agreement arrived at through arbitration in
4 accordance with this subsection:

5 (1) May not be submitted for inclusion in the Judicial Department's operating
6 budget for the fiscal year in which the agreement is ratified; and

7 (2) Must be submitted for inclusion in the Judicial Department's operating budget
8 for the fiscal year following the fiscal year in which the agreement is ratified.

9 With respect to controversies over ~~salaries~~, pensions and insurance, the arbitrator shall
10 recommend terms of settlement and may make findings of fact. The recommendations and
11 findings ~~shall be~~ are advisory and ~~shall be~~ are not be binding upon the parties. The
12 determination by the arbitrator on all other issues ~~shall be~~ is final and binding on the parties.
13 Notwithstanding section 1284, subsection 2, if the public employer fails to enter into an
14 agreement or take whatever other action may be appropriate to carry out and effectuate
15 binding determinations made by arbitrators pursuant to this subsection, the judicial
16 employees represented by the bargaining agent, except for employees whose duties include
17 protecting public safety, may engage in a strike.

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

26 **Sec. 12. 26 MRS §1285, sub-§5, ¶E**, as enacted by PL 1983, c. 702, is amended
27 to read:

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

34 **Sec. 13. Effective date.** This Act takes effect July 1, 2022.

35 **SUMMARY**

36 Under current law, arbitrations under labor relations laws governing municipal public
37 employees, University of Maine System employees, state employees and judicial
38 employees require that each party select one arbitrator and those 2 arbitrators select a
39 neutral 3rd arbitrator. This bill requires that the neutral 3rd arbitrator be selected from a
40 panel of arbitrators appointed by the Governor from a list of nominations supplied by the
41 Maine Labor Relations Board. Under the bill, appointees to the panel of arbitrators serve
42 as impartial arbitrators of the interests of the public in the settlement of disputes between

1 employers and employees or their representatives, and each appointee must reside in the
2 State. In addition, this bill:

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

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

10 3. Amends the labor relations laws governing judicial employees to provide that an
11 arbitrator's determinations with respect to controversies over all subjects, including
12 salaries, pensions and insurance, are final and binding on the parties and that, with respect
13 to controversies over salaries, determinations by mediator-arbitrators are final and binding
14 on the parties;

15 4. Adds specific factors an arbitrator must consider when a controversy is not resolved
16 between a public employer and bargaining agent under the municipal public employees
17 labor relations law;

18 5. Provides that, if a public employer fails to enter into an agreement to carry out and
19 effectuate binding determinations made by arbitrators, the public employees are authorized
20 to strike;

21 6. Requires that cost items in a collective bargaining agreement arrived at through
22 arbitration may not be included in the state or local operating budget, as relevant, for the
23 current fiscal year, but must instead be submitted for inclusion in the operating budget for
24 the following fiscal year; and

25 7. Provides an effective date for the changes made in the bill of July 1, 2022.