LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND ELEVENTH LEGISLATURE

SECOND SPECIAL SESSION
November 18, 1983

AND AT THE

SECOND REGULAR SESSION
January 4, 1984 to April 25, 1984

AND AT THE

THIRD SPECIAL SESSION
September 4, 1984 to September 11, 1984

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

SECOND REGULAR SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

JANUARY 4, 1984 TO APRIL 25, 1984

A. A parent is not liable for a child resident's care and treatment, unless the child resident was wholly or partially dependent for support upon the parent at the time of admission; and

~~B. A child is not liable for a parent resident's care and treatment, if:~~

~~(1) The parent resident willfully failed to support the child prior to the child's 18th birthday, and~~

~~(2) The child provides the department with clear and convincing evidence substantiating such a claim, and~~

C. The department may not charge any parent for the care and treatment of a child resident beyond the child's 18th birthday, or beyond 6 months from the date of the child's admission, whichever occurs later.

Effective July 25, 1984.

CHAPTER 702

H.P. 1649 - L.D. 2175

AN ACT to Create the Judicial Employees Labor Relations Act.

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

26 MRSA c. 14 is enacted to read:

CHAPTER 14

JUDICIAL EMPLOYEES LABOR RELATIONS ACT

§1281. Purpose

It is declared to be the public policy of this State and it is the purpose of this chapter to promote improvement of the relationship between the Judicial Department of the State and its employees by cooperating with the Supreme Judicial Court in recognizing the right of judicial employees to join labor organizations of their own choosing and to be repre-

sented by those organizations in collective bargaining for terms and conditions of employment.

§1282. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Bargaining agent. "Bargaining agent" means any lawful organization, association or individual representative of such an organization or association which has as its primary purpose the representation of employees in their employment relations with employers, and which has been determined by the public employer, as defined in subsection 6, or by the executive director of the board to be the choice of the majority of the unit as their representative.

2. Board. "Board" means the Maine Labor Relations Board, as defined in section 968.

3. Cost items. "Cost items" means the provisions of a collective bargaining agreement.which require an appropriation by the Legislature.

4. Executive director. "Executive director" means the Executive Director of the Maine Labor Relations Board, as defined in section 968, subsection 2.

5. Judicial employee. "Judicial employee" means any employee of the Judicial Department, except any person:

A. Who is appointed by the Governor;

B. Who serves as the State Court Administrator;

C. Whose duties necessarily imply a confidential relationship to the Judicial Department's bargaining representative with respect to matters subject to collective bargaining;

D. Who is a department or division head;

E. Who is appointed to serve as a law clerk to a judge or a justice;

F. Who is a temporary, seasonal or on-call employee, including interns; or

G. Who has been employed for less than 6 months.

6. Public employer. "Public employer" means the Judicial Department of the State. It is the responsibility of the Judicial Department to negotiate collective bargaining agreements and to administer those agreements. It is the responsibility of the Legislature to act upon those portions of tentative agreements negotiated by the Judicial Department which require legislative action. To coordinate the employer position in the negotiation of agreements, the Legislative Council or its designee shall maintain close liaison with the bargaining representative of the Judicial Department relative to negotiating cost items in any proposed agreement. The Supreme Judicial Court may designate a bargaining representative for the Judicial Department who may:

A. Develop and execute employee relations policies, objectives and strategies consistent with the overall objectives and constitutional and statutory duties of the Judicial Department;

B. Conduct negotiations with certified and recognized bargaining agents;

C. Administer and interpret collective bargaining agreements, and coordinate and direct Judicial Department activities as necessary to promote consistent policies and practices;

D. Represent the Judicial Department in all bargaining unit determinations, elections, prohibited practice complaints and any other proceedings growing out of employee relations and collective bargaining activities;

E. Coordinate the compilation of all data and information needed for the development and evaluation of employee relations programs and in the conduct of negotiations;

F. Coordinate the Judicial Department's resources as needed to represent the department in negotiations, mediation, fact finding, arbitration, mediation-arbitration and other proceedings; and

G. Provide staff advice on employee relations to the courts, judges and supervisory personnel, including providing for necessary supervisory and managerial training.

All state departments and agencies shall provide such assistance, services and information as required by

the Judicial Department and shall take such administrative or other action as may be necessary to implement and administer the provisions of any binding agreement between the Judicial Department and employee organizations entered into under law.

§1283. Right of judicial employees to join labor organizations

No one may directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against judicial employees or a group of judicial employees in the free exercise of their rights voluntarily to join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining, or in the free exercise of any other right under this chapter.

§1284. Prohibited acts of the public employer, judicial employers and judicial employee organizations

1. Public employer prohibitions. The public employer, its representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1283;

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment;

C. Dominating or interfering with the formation, existence or administration of any employee organization;

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter;

E. Refusing to bargain collectively with the bargaining agent of its employees, as required by section 1285; or

F. Blacklisting any employee organization or its members for the purpose of denying them employment.

2. Judicial employee prohibitions. Judicial employees, judicial employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1283 or the public employer in the selection of its representative for purposes of collective bargaining or the adjustment of grievances;

B. Refusing to bargain collectively with the public employer, as required by section 1285;

C. Engaging in:

(1) A work stoppage;

(2) A slowdown;

(3) A strike; or

(4) The blacklisting of the public employer for the purpose of preventing it from filling employee vacancies.

3. Violations. Violations of this section shall be processed by the board in the manner provided in section 1289.

§1285. Obligation to bargain; methods of resolving disputes

1. Negotiations. On and after the effective date of this chapter, it shall be the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

A. To meet at reasonable times;

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided that the parties have not otherwise agreed in a prior written contract;

C. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation shall not exceed 2 years; and

D. To participate in good faith in the mediation, fact finding, arbitration and mediation-arbitration procedures required by this section;

E. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party may be compelled to agree to a proposal or be required to make a concession. All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining, except those matters which are prescribed or controlled by law. Such matters appropriate for collective bargaining, to the extent they are not prescribed or controlled by law, include, but are not limited to:

(1) Wage and salary schedules to the extent they are inconsistent with rates prevailing in commerce and industry for comparable work within the State;

(2) Work schedules relating to assigned hours and days of the week;

(3) Use of vacation or sick leave, or both;

(4) General working conditions;

(5) Overtime practices; and

(6) Rules for personnel administration, except for rules relating to applicants for employment and employees in an initial probationary status, including any extensions thereof, provided that the rules are not discriminatory by reason of an applicant's race, color, creed, sex or national origin.

Cost items shall be included in the Judicial Department's next operating budget in accordance with Title 4, section 24. If the Legislature rejects any of the cost items submitted to it, all cost items submitted shall be returned to the parties for further bargaining.

2. Mediation.

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and em-

ployees or their representatives and other disputes subject to settlement through mediation.

B. Mediation procedures, as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Maine Labor Relations Board or its executive director.

C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions.

D. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged.

3. Fact-finding.

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may agree either to call upon the Maine Labor Relations Board for fact-finding services with recommendations or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures and rules.

B. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making the appointment. Any person who has actively participated as the mediator in the immediate proceedings for which fact-finding has been called shall not sit on that fact-finding panel. The panel shall hear the contending parties to the controversy. It may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Bureau of Labor Standards, and may administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to

them. The members of the fact-finding panel shall submit their findings and recommendations only to the parties and to the Executive Director of the Maine Labor Relations Board.

C. The parties shall have a period of 30 days, after the submission of findings and recommendations from the fact finders, in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of the period, either party or the executive director may, but not until the end of the period unless the parties otherwise agree, make the fact-finding and recommendations public.

4. Arbitration.

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

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

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

(2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the

wages, hours and working conditions of other employees performing similar services in the executive and legislative branches of government and in public and private employment in other jurisdictions competing in the same labor market;

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

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

(5) The need of the Judicial Department for qualified employees;

(6) Conditions of employment in similar occupations outside State Government;

(7) The need to maintain appropriate relationships between different occupations in the Judicial Department; and

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

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

Any hearing shall be informal and the rules of evidence for judicial proceedings shall not be binding. Any documentary evidence and other information deemed relevant by the arbitrator may be received in evidence. The arbitrator may administer oaths and require by subpoena attendance and testimony of wit-

nesses and production of books and records and other evidence relating to the issues presented.

The arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless that time limitation is extended by the executive director.

5. Mediation-arbitration

A. The parties may agree in advance to a mediation-arbitration procedure.

B. The parties may jointly select a mediator-arbitrator. If they are unable to agree, either party may request the Executive Director of the Maine Labor Relations Board to select a mediator-arbitrator from a panel of mediators or from the State Board of Arbitration and Conciliation. The executive director may not select a person who has served as a mediator at an earlier stage of the same proceedings.

C. The mediator-arbitrator shall encourage the parties to reach a voluntary settlement of their dispute, but may, after a reasonable period of mediation as he may determine, initiate an arbitration proceeding by notifying the parties of his intention to serve as a single arbitrator.

D. Any hearing shall be informal and the rules of evidence for judicial proceedings shall not be binding. Any documentary evidence and other information deemed relevant by the mediator-arbitrator may be received in evidence. The mediator-arbitrator shall have the power to administer oaths and to require by subpoena attendance and testimony of witnesses and production of books and records and other evidence relating to the issues presented.

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

F. The mediator-arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless the period is extended by the executive director.

6. Reports of arbitration. The results of all arbitration and mediation-arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submissions of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration or mediation-arbitration proceeding, the arbitrator, the chairman of the arbitration panel or the mediator-arbitrator shall submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the proceeding has terminated.

7. Costs. The costs for the services of the mediator, the members of the fact-finding board, the neutral arbitrator and the mediator-arbitrator, including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding, arbitration or mediation-arbitration proceedings are conducted, shall be shared equally by the parties to the proceedings. All other costs shall be assumed by the party incurring them. The services of the members of the State of Maine's Panel of Mediators, to a maximum of 3 mediation days per case, and of the State Board of Arbitration and Conciliation are available to the parties without cost.

8. Arbitration administration. The cost of services rendered and expenses incurred by the State Board of Arbitration and Conciliation, as defined in section 911, shall be paid by the State from an appropriation for the State Board of Arbitration and Conciliation, which shall be included in the budget of the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation shall be the responsibility of the executive director.

§1286. Bargaining unit; how determined

1. Unit determination. In the event of a dispute between the public employer and an employee or employees over the appropriateness of a unit for purposes of collective bargaining or between the public

employer and an employee or employees over whether a supervisory or other position is included in the bargaining unit, the executive director or his designee shall make the determination, except that anyone excepted from the definition of judicial employee under section 1282 may not be included in a bargaining unit. The executive director or his designee conducting unit determination proceedings may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them.

2. Criteria. In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or his designee shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.

3. Determination of unit appropriateness. In determining the unit appropriate for purposes of collective bargaining, the executive director or his designee shall seek to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to insure a clear and identifiable community of interest among employees concerned and to avoid excessive fragmentation among bargaining units.

4. Unit clarification. When there is a certified or currently recognized bargaining representative and when the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, the public employer or any recognized or certified bargaining agent may file with the executive director a petition for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

§1287. Determination of bargaining agent

1. Voluntary recognition. Any judicial employee organization may file a request with the public employer alleging that a majority of the judicial employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. The request for recognition shall be granted by the public employer, unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

2. Elections. The executive director of the board or his designee, upon signed request of a public employer alleging that one or more judicial employees or judicial employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of judicial employees, or upon signed petition of at least 30% of a bargaining unit of judicial employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members of the bargaining unit. Such an election may be conducted at suitable work locations or through the United States mail, provided that the procedures adopted and employed by the board shall maintain the anonymity of the voter from both the employee organizations and the management representatives involved.

3. Voting.

A. The ballot shall contain the name of the organization and that of any other organization showing written proof of at least 10% representation of the judicial employees within the unit, together with a choice for any judicial employee to designate that he does not desire to be represented by any bargaining agent. When more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the judicial employees voting, a runoff election shall be held. The runoff ballot shall contain the 2 choices which received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the em-

ployees in the bargaining unit, unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director of the board as not representing a majority of the unit.

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

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

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

§1288. Maine Labor Relations Board; rule-making procedure and review of proceedings

1. Rule-making procedure. Proceedings conducted under this chapter shall be subject to the rules and procedures of the board promulgated under section 968, subsection 3.

2. Review of representation proceedings. Any person aggrieved by any ruling or determination of the executive director under sections 1286 and 1287

may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period shall be 5 working days, to the Maine Labor Relations Board. Upon receipt of such an appeal, the board shall, within a reasonable time, hold a hearing, having first caused 7 days' notice in writing of the time and place of that hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. The hearings and the procedures established in furtherance thereof shall be in accordance with section 968. Decisions of the board made pursuant to this subsection shall be subject to review by the Superior Court in the manner specified in section 1292.

§1289. Prevention of prohibited acts

1. Prevention of prohibited acts; board powers. The board may prevent any person, the public employer, any judicial employee, any judicial employee organization or any bargaining agent from engaging in any of the prohibited acts enumerated in section 1284. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

2. Complaints. The public employer, any judicial employee, any judicial employee organization or any bargaining agent which believes that any person, the public employer, any judicial employee, any judicial employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. No such complaint may be filed with the executive director until the complaining party has served a copy thereof upon the party complained of. Upon receipt of the complaint, the executive director or his designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act and shall forthwith cause an investigation to be conducted. The executive director shall attempt to obtain and evaluate sworn affidavits from persons having knowledge of the facts. If it is determined that the sworn facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board. If it is determined from the sworn facts that the complaint is meritorious, the executive director shall recommend a proposed settlement. The parties have 30 days after the recommendations

are made to resolve their dispute. If the parties have not resolved their dispute by the end of the 30-day period, either party or the executive director may make the recommendations public, but not until the expiration of the 30-day period, unless the parties otherwise agree. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board, that notice to designate the time and place of the hearing for the prehearing conference or the hearing, as appropriate, provided that a hearing shall not be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of shall have the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in that proceeding and to present testimony. Nothing in this subsection may restrict the right of the board to require the executive director or his designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as he may deem appropriate, subject to review by the board.

3. Cease and desist order. After hearing and argument, if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon the party an order requiring the party to cease and desist from that prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. No order of the board may require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if that individual was suspended or discharged for cause.

4. Dismissal of complaint. After hearing and argument, if the board is not persuaded by a preponderance of the evidence received that the party named

in the complaint has engaged in or is engaging in any prohibited practice, the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue an order dismissing the complaint.

5. Action to compel compliance. If, after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, that party fails to comply with the order of the board, the party in whose favor the order operates or the board may file a civil action in the Superior Court in Kennebec County to compel compliance with the order of the board. In such action to compel compliance, the Superior Court shall not review the action of the board other than to determine questions of law. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

6. Interim injunctive relief. Whenever a complaint is filed with the executive director of the board, alleging that the public employer has violated section 1284, subsection 1, paragraph F, or alleging that a judicial employee or judicial employee organization or bargaining agent has violated section 1284, subsection 2, paragraph C, the party making the complaint may simultaneously seek interim injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to that matter.

7. Review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, provided that the complaint shall be filed within 15 days of the effective date of the decision. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it deems just and proper; provided that the board's decision or order shall not be stayed, except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk

of danger to the public health, safety or welfare or interference with the exercise of the judicial power. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record shall include all documents filed in the proceeding and the transcript, if any. After hearing, which shall be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact shall be final unless shown to be clearly erroneous. Any appeal to the Law Court shall be expedited in the same manner as an appeal from an interlocutory order under section 6.

8. Privileges seeking injunctive relief. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply, except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property may be required to obtain a temporary restraining order or injunction.

9. Interference with exercise of judicial power. The Maine Labor Relations Board shall not have power to interfere with the exercise of the judicial power.

§1290. Hearings before the Maine Labor Relations Board

1. Hearings; rules of evidence; evidence. Hearings conducted by the board shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

2. Subpoenas; evidence; witness fees. The chairman may administer oaths and require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

§1291. Scope of binding contract arbitration

A collective bargaining agreement between the public employer and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure, but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the specific terms of the collective bargaining agreement. An arbitrator with the power to make binding decisions pursuant to any such provision shall have no authority to add to, subtract from or modify the collective bargaining agreement.

§1292. Review of arbitration awards

1. Review by Superior Court. Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. The review shall be sought in accordance with the Maine Rules of Civil Procedure, Rule 80C.

2. Questions of fact. In the absence of fraud, the binding determination of an arbitration panel, arbitrator or mediator-arbitrator shall be final upon all questions of fact.

3. Action by court; appeal. The court may, after consideration, affirm or reverse or modify any such binding determination or decision based upon any erroneous ruling. An appeal may be taken to the Law Court as in any civil action.

§1293. Separability

1. Separability. If any clause, sentence, paragraph or part of this chapter, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part therof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is declared to be the legislative intent that this chapter would have been adopted had such invalid provisions not been included.

2. Eligibility under federal programs. Nothing in this chapter or any contract negotiated pursuant to this chapter may in any way be interpreted or allowed to restrict or impair the eligibility of the

State or the Judicial Department in obtaining the benefits under any federal grant-in-aid or assistance programs.

§1294. Amendment

This Act shall not be amended without first consulting the Supreme Judicial Court.

Effective July 25, 1984.

CHAPTER 703

H.P. 1422 - L.D. 1867

AN ACT Concerning the Open Burning of Leaves and Brush.

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

Sec. 1. 38 MRSA §582, sub-§8, as enacted by PL 1969, c. 474, §1, is amended to read:

8. Municipality. "Municipality" includes, for purposes of enacting an air pollution control ordinance, only cities ~~and~~, organized towns and plantations.

Sec. 2. 38 MRSA §599, sub-§2, ¶F, as repealed and replaced by PL 1983, c. 504, §7, is amended to read:

F. The residential open burning of leaves, brush, deadwood and tree cuttings accrued from normal property maintenance by the individual land or homeowner or lessee thereof is prohibited where ~~a municipal property tax supported trash collection service is available and will accept these materials~~ expressly prohibited by the municipality in all or part of the municipality through an ordinance.

Sec. 3. 38 MRSA §599, sub-§3, ¶F, as repealed and replaced by PL 1983, c. 504, §7, is amended to read:

F. Residential open burning of leaves, brush, deadwood and tree cuttings accrued from normal property maintenance by the individual land or