

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

SECOND SPECIAL SESSION
June 19, 2018 to September 13, 2018

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
DECEMBER 13, 2018

ONE HUNDRED AND TWENTY-NINTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2018 to June 20, 2019

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
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amount that, together with regular interest on that amount, is the actuarial equivalent, at the effective date of the retirement benefit, of the portion of the retirement benefit based on the additional creditable service.

A. Payment must be made before any retirement benefit becomes effective for that member.

B. Payment may be made to the retirement system by a single direct payment or by annual direct payments in accordance with section 17701, subsection 4.

Sec. 2. 5 MRSA §17851-A, sub-§3, ¶B, as enacted by PL 1997, c. 769, §11, is amended to read:

B. For the purpose of meeting the qualification requirement of subsection 2, paragraph B:

(1) Service credit purchased by repayment of an earlier refund of accumulated contributions following termination of service is included if the time to which the refund relates was served in any one or a combination of the capacities specified in subsection 1, regardless of whether the time was served before or after the establishment of the 1998 Special Plan; and

(2) Service credit purchased other than as provided under subparagraph (1) is not included, except that service credit purchased for military service or for law enforcement service pursuant to section 17767 is included.

Sec. 3. 5 MRSA §18363 is enacted to read:

§18363. Law enforcement service

Service credit for service in law enforcement is governed as follows.

1. Service before becoming member. A member who served as a full-time law enforcement officer with a federal, state, county or local law enforcement agency before becoming a member is entitled under this subsection to purchase service credit for the period of time that the member served as a law enforcement officer if the member has at least 15 years of creditable service at the time of retirement by complying with the terms and conditions of this subsection and the applicable provisions of subsection 2. Service credit purchased under this section is limited to 4 years. Notwithstanding anything to the contrary, a member for which service credit under this section is to be granted must provide a certified statement from the appropriate retirement system that the service credit to be granted has not been and will not be used to obtain other retirement benefits.

2. Members qualified for credit at actuarial cost. A member qualified under subsection 1 to purchase service credit at the cost set forth in this subsection is entitled to service credit if the member pays an

amount that, together with regular interest on that amount, is the actuarial equivalent, at the effective date of the retirement benefit, of the portion of the retirement benefit based on the additional creditable service.

A. Payment must be made before any retirement benefit becomes effective for that member.

B. Payment may be made to the retirement system by a single direct payment or by annual direct payments in accordance with section 17701, subsection 4.

See title page for effective date.

CHAPTER 460

H.P. 1025 - L.D. 1412

**An Act To Amend the Laws
Governing the Collective
Bargaining Rights of
Employees of School
Management and Leadership
Centers**

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

Sec. 1. 5 MRSA §17001, sub-§42, as amended by PL 2007, c. 491, §§66 and 67, is further amended to read:

42. Teacher. "Teacher" means:

A. Any employee of a public school or a school management and leadership center established pursuant to Title 20-A, chapter 123 who fills any position that the Department of Education requires be filled by a person who holds the appropriate certification or license required for that position and:

(1) Holds appropriate certification from the Department of Education, including an employee whose duties include, in addition to those for which certification is required, either the setup, maintenance or upgrading of a school computer system the use of which is to assist in the introduction of new learning to students or providing school faculty orientation and training related to use of the computer system for educational purposes; or

(2) Holds an appropriate license issued to a professional employee by a licensing agency of the State;

B. Any employee of a public school or a school management and leadership center established pursuant to Title 20-A, chapter 123 who fills any position not included in paragraph A, the principal

function of which is to introduce new learning to students, except that a coach who is employed by a public school and who is not otherwise covered by the definition of teacher as defined in this subsection or an employee who is employed in adult education as defined in Title 20-A, section 8601-A, subsection 1 and who is not otherwise covered by the definition of teacher defined in this subsection may not be considered a teacher for purposes of this Part;

C. Any employee of a public school on June 30, 1989, in a position not included in paragraph A or B which was included in the definition of teacher in effect on June 30, 1989, as long as:

- (1) The employee does not terminate employment; or
- (2) The employee terminates employment and returns to employment in a position in the same classification within 2 years of the date of termination.

Regardless of any subsequent employment history, any employee of a public school in a position which was included in the definition of teacher in effect on June 30, 1989, is entitled to creditable service as a teacher for all service in that position on or before that date;

D. Any employee of a public school or a school management and leadership center established pursuant to Title 20-A, chapter 123 in a position not included in paragraph A, B or C who was a member of the State Employee and Teacher Retirement Program of the retirement system as a teacher on August 1, 1988, as long as:

- (1) The employee does not terminate employment; or
- (2) The employee terminates employment and returns to employment in a position in the same classification within 2 years of the date of termination;

E. Any former employee of a public school or a school management and leadership center established pursuant to Title 20-A, chapter 123 in a position not included in paragraph A, B or C who was a member of the State Employee and Teacher Retirement Program of the retirement system as a teacher before August 1, 1988, as long as the former employee returns to employment in a position in the same classification before July 1, 1991; or

F. For service before July 1, 1989, any employee of a public school in a position which was included in the definition of teacher before July 1, 1989.

"Teacher" includes a person who is on a one-year leave of absence from a position as a teacher and is participating in the education of prospective teachers

by teaching and supervising students enrolled in college-level teacher preparation programs in this State.

"Teacher" also includes a person who is on a leave of absence from a position as a teacher and is duly elected as President of the Maine Education Association.

"Teacher" also includes a person who, subsequent to July 1, 1981, has served as president of a recognized or certified bargaining agent representing teachers for which released time from teaching duties for performance of the functions of president has been negotiated in a collective bargaining agreement between the collective bargaining agent and the teacher's school administrative unit and for whom contributions related to the portion of the person's salary attributable to the released time have been paid as part of the regular payroll of the school administrative unit.

Sec. 2. 5 MRSA §17154, sub-§6, ¶J is enacted to read:

J. Notwithstanding this section, the employer retirement costs and administrative operating expenses related to the retirement programs applicable to those teachers employed by a school management and leadership center, as defined in Title 20-A, section 3801, subsection 1, paragraph B, whose funding is provided from local and state funds must be paid by that school management and leadership center.

Sec. 3. 20-A MRSA §3808 is enacted to read:

§3808. Collective bargaining in school management and leadership centers

1. Assumption of obligations, duties, liabilities and rights. On and after the operational date of a school management and leadership center, teachers and other employees whose positions are transferred from a school administrative unit to the school management and leadership center and were included in a bargaining unit represented by a bargaining agent, and for participating school administrative units, teachers and other employees who are subsequently employed by the school management and leadership center and were included in a bargaining unit and represented by a bargaining agent, continue to be included in the same bargaining unit and represented by the same bargaining agent pending completion of the bargaining agent and bargaining unit merger procedures and bargaining for initial school management and leadership center collective bargaining agreements covering school management and leadership center employees, as described in this section. After teachers and other employees become employees of the school management and leadership center, the school management and leadership center has the obligations, duties, liabilities and rights of a public employer pursuant to Title 26, chapter 9-A with respect to those teachers and other employees.

2. Structure of bargaining units. All bargaining units of school management and leadership center employees must be structured on a school management and leadership center-wide basis. Teachers and other employees who are employed by the school management and leadership center to provide consolidated services must be removed from the existing bargaining units of teachers and other employees who are employed by each member school unit and merged into units of school management and leadership center employees. Merger into school management and leadership center-wide bargaining units is not subject to approval or disapproval of employees. Formation of school management and leadership center-wide bargaining units must occur in accordance with this subsection.

A. In each school management and leadership center, there must be one bargaining unit of teachers, if any teachers are employed by the school management and leadership center, and, to the extent they are on the effective date of this paragraph included in bargaining units, other certified professional employees, excluding principals and other administrators.

B. Any additional bargaining units in a school management and leadership center must be structured as follows.

(1) In the initial establishment of such units, units must be structured primarily on the basis of the existing pattern of organization, maintaining the grouping of employee classifications into bargaining units that existed prior to the creation of the school management and leadership center and avoiding conflicts among different bargaining agents to the extent possible.

(2) In the event of a dispute regarding the classifications to be included within a school management and leadership center-wide bargaining unit, the current bargaining agent or agents or the school management and leadership center may petition the Maine Labor Relations Board to determine the appropriate unit in accordance with this section and Title 26, section 966.

C. When there is the same bargaining agent in all bargaining units that will be merged into a school management and leadership center-wide bargaining unit, the units must be separated and merged on the operational date or the date represented employees are transferred to the school management and leadership center, whichever is applicable, and the school management and leadership center shall recognize the bargaining agent as the representative of the merged unit.

D. When all bargaining units that will be separated and merged into a school management and leadership center-wide bargaining unit are represented by separate local affiliates of the same state labor organization, the units must be separated and merged on the operational date or the date represented employees are transferred to the school management and leadership center, whichever is applicable. The identity of a single affiliate that will be designated the bargaining agent for the merged unit must be selected by the existing bargaining agents and the state labor organization. Upon completion of the merger and designation of the bargaining agent and notification by the state labor organization to the school management and leadership center, the school management and leadership center shall recognize the designated bargaining agent as the representative of employees in the merged unit. If necessary, the parties shall then execute a written amendment to any collective bargaining agreement then in effect to change the name of the bargaining agent to reflect the merger.

E. When there are bargaining units that will be separated and merged into a school management and leadership center-wide bargaining unit in which there are employees who are not represented by any bargaining agent and other employees who are represented either by the same bargaining agent or separate local affiliates of the same state labor organization, the units must be separated and merged on the operational date or the date represented employees are transferred to the school management and leadership center, whichever is applicable, as long as a majority of employees who compose the merged unit were represented by the bargaining agent prior to the merger. The procedures for separation and merger of separate local affiliates of the same state labor organization described in paragraph D must be followed if applicable. If prior to the merger a bargaining agent did not represent a majority of employees who compose the merged unit, a bargaining agent election must be conducted by the Maine Labor Relations Board pursuant to paragraph F.

F. When bargaining units with different bargaining agents must be merged into a single school management and leadership center-wide bargaining unit pursuant to this section, the bargaining agent of the merged bargaining unit must be selected in accordance with Title 26, section 967 except as modified in this section.

(1) A petition for an election to determine the bargaining agent must be filed with the Maine Labor Relations Board by any of the current bargaining agents or the school management and leadership center.

(2) The petition must be filed not more than 90 days prior to the first August 31st occurring after either the 3rd anniversary date of the operational date of the school management and leadership center or the date on which positions are transferred from member school units to the school management and leadership center, whichever is later.

(3) The election ballot may contain only the names of the bargaining agents of bargaining units that will be merged into the school management and leadership center-wide bargaining unit and the choice of no representative, but no other choices. A showing of interest is not required from any such bargaining agent other than its current status as representative.

(4) The obligation to bargain with existing bargaining agents continues from the operational date of the school management and leadership center or the date on which positions are transferred from member school units to the school management and leadership center, whichever is later, until the determination of the bargaining agent of the school management and leadership center-wide bargaining unit under this section; but in no event may any collective bargaining agreement that is executed after the operational date extend beyond the first August 31st occurring after either the 3rd anniversary date of the operational date of the school management and leadership center or the date on which positions are transferred from member school units to the school management and leadership center, whichever is later.

(5) The Maine Labor Relations Board shall expedite to the extent practicable all petitions for determination of the bargaining agent in the school management and leadership center filed pursuant to this section.

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

(7) Until the first August 31st occurring after either the 3rd anniversary date of the operational date of the school management and leadership center or the date on which positions are transferred from member school units to the school management and leadership center, whichever is later, existing bargaining agents shall continue to represent the

bargaining units that they represented on the day prior to the operational date of the school management and leadership center. If necessary, each bargaining agent and the school management and leadership center must negotiate interim collective bargaining agreements to expire the first August 31st occurring after either the 3rd anniversary date of the operational date of the school management and leadership center or the date on which positions are transferred from member school units to the school management and leadership center, whichever is later.

(8) When there are 2 or more bargaining units in which there are employees who are represented either by the same bargaining agent or by separate local affiliates of the same state labor organization that will be merged into a school management and leadership center-wide bargaining unit with one or more other bargaining units pursuant to the election procedures described in this paragraph, the bargaining units that are represented either by the same bargaining agent or by separate local affiliates of the same state labor organization must merge as of the operational date. The procedures for merger of separate local affiliates of the same state labor organization described in paragraph D must be followed if applicable.

3. Agent to engage in collective bargaining.

After the merger of bargaining units in a school management and leadership center, the bargaining agent of a school management and leadership center-wide bargaining unit and the school management and leadership center shall engage in collective bargaining for a collective bargaining agreement for the school management and leadership center-wide bargaining unit. In the collective bargaining agreement for each school management and leadership center-wide bargaining unit, the employment relations, policies, practices, salary schedules, hours and working conditions throughout the school management and leadership center must be made uniform and consistent as soon as practicable. In the event that the parties are unable to agree upon an initial school management and leadership center-wide collective bargaining agreement, the parties shall use the dispute resolution procedures pursuant to Title 26, section 965 to resolve their differences.

4. Application of collective bargaining agreements. On and after the operational date of a school management and leadership center, but before the completion of negotiations for a single school management and leadership center-wide collective bargaining agreement for the school management and leadership center-wide bargaining unit, the wages, hours and working conditions of an employee of the

school management and leadership center who is in a bargaining unit and who is reassigned to a different position that is in a different bargaining unit but that upon the completion of the merger of bargaining units will be included in the same school management and leadership center-wide bargaining unit must be determined by the terms of the collective bargaining agreement that applies to the position to which the employee is reassigned, except as provided in this subsection.

A. If the application of the collective bargaining agreement that applies to the position to which the employee is reassigned would cause a reduction in the employee's wage or salary rate, the employee's wage or salary rate must be maintained at the rate the employee was paid immediately prior to the reassignment until the completion of negotiations for a single school management and leadership center-wide collective bargaining agreement for the school management and leadership center-wide bargaining unit or the applicable collective bargaining agreement requires a higher wage or salary rate for the employee, whichever occurs sooner.

B. If the application of the existing collective bargaining agreement that applies to the position to which the employee is reassigned would cause a reduction in the amount that is paid by the school management and leadership center for premiums for health insurance for the employee and the employee's dependents, the school management and leadership center's payment must be maintained at the amount that was paid immediately prior to the reassignment until the completion of negotiations for a single school management and leadership center-wide collective bargaining agreement for the school management and leadership center-wide bargaining unit or the applicable collective bargaining agreement requires a higher payment, whichever occurs sooner.

C. If the application of the existing collective bargaining agreement that applies to the position to which the employee is reassigned provides for coverage under a different health insurance plan, the employee may elect to retain coverage under the health insurance plan in which the employee was enrolled immediately prior to reassignment if the eligibility provisions of the plan permit until the completion of negotiations for a single school management and leadership center-wide collective bargaining agreement for the school management and leadership center-wide bargaining unit.

See title page for effective date.

CHAPTER 461 S.P. 473 - L.D. 1524

An Act To Prevent Wage Theft and Promote Employer Accountability

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

Sec. 1. 26 MRSA §637 is enacted to read:

§637. Wage theft remedies

1. Wage theft; defined. For the purposes of this section, "wage theft" means a violation of section 621-A, 622, 623, 626, 629, 629-A or 664.

2. Injunction. In addition to other remedies allowed by this chapter, the Department of Labor or any person or persons injured by an unlawful wage payment practice or policy that causes direct harm to workers may bring an action for injunctive relief to enjoin further wage theft. If a party seeking an injunction prevails, the employer is liable to pay the cost of suit, including a reasonable attorney's fee.

3. Issuance of a cease operations order. The Commissioner of Labor or the commissioner's designee may order an employer to cease its business operations if the commissioner or the commissioner's designee determines that the employer has committed wage theft, the commissioner or the commissioner's designee has previously determined the employer's practice or policy resulted in wage theft on more than one occasion or within the last 12 months and:

A. The practice or policy resulting in the wage theft affects 10 or more employees; or

B. The wage theft is equal to or greater than twice an employee's average weekly wage.

The commissioner or the commissioner's designee shall provide the employer with notice and an opportunity to be heard 3 business days before the effective date of an order issued pursuant to this subsection. The issuance of a cease operations order constitutes final agency action. The commissioner or the commissioner's designee shall issue the cease operations order as narrowly as is determined necessary. Any person who is aggrieved by the imposition of a cease operations order has 10 days from the date of its service to make a request to the commissioner or the commissioner's designee for a hearing. The hearing must be held within 7 business days of the request. The hearing officer shall issue a decision within 5 business days of the hearing.

If an employer refuses to obey an order to cease operations, that order may be enforced in Superior Court.

4. Stay of cease operations order. The Commissioner of Labor or the commissioner's designee