

MAINE STATE LEGISLATURE

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CHAPTER 9

MEDIATION AND ARBITRATION

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SUBCHAPTER I

PANEL OF MEDIATORS

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§ 881. Policy

It is declared to be the policy of the State to provide full and adequate facilities for the settlement of disputes between employers and employees or their representatives through mediation.

R.S.1954, c. 30, § 10.

§ 882. Panel

A Panel of Mediators, as heretofore established, shall consist of 5 impartial members appointed by the Governor, with the advice and consent of the Council, from time to time upon the expiration of the terms of the several members, for terms of 3 years. One member of the panel shall be appointed chairman thereof by the Governor with the advice and consent of the Council. Vacancies occurring during a term shall be filled for the unexpired term. Members of the panel shall each receive \$25 a day for their services, for the time actually employed in the discharge of their official duties and shall also receive their traveling and all other necessary expenses. Neither the commissioner nor any official of the Department of Labor and Industry nor any member of the Board of Arbitration and Conciliation shall be eligible to

serve as a member of the panel nor have any jurisdiction or authority over the panel in the performance of its duties.

R.S.1954, c. 30, § 11; 1955, c. 468.

§ 883. Mediation procedure; duties

The chairman of the panel, upon request of one or both of the parties to a dispute between an employer and his employees, shall, or upon his own motion may, proffer the services of one or more members of the panel to be selected by the chairman, to serve as a mediator or mediators in such a dispute. The member or members so selected shall exert every reasonable effort to encourage the parties to the dispute to settle their differences by conference or other peaceful means.

R.S.1954, c. 30, § 12.

§ 884. Services not available if covered by agreement

The services of the panel as mediators shall not be invoked in any dispute between the parties to an agreement between an employer and his employees if such agreement contains provisions providing a method for settlement of such dispute.

R.S.1954, c. 30, § 13.

§ 885. Information privileged

Any information disclosed by either party to a dispute to the panel or any of its members in carrying out this subchapter shall be privileged.

R.S.1954, c. 30, § 14.

SUBCHAPTER II

STATE BOARD OF ARBITRATION AND CONCILIATION

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§ 911. Appointment and qualification; salaries and expenses; rules; reports

The State Board of Arbitration and Conciliation, as heretofore established and hereinafter in this subchapter called the "board", shall consist of 3 members appointed by the Governor, with the advice and consent of the Council, from time to time upon the expiration of the terms of the several members, for terms of 3 years. One member shall be an employer of labor or selected from some association representing employers of labor, and another shall be an employee or an employee selected from some bona fide trade or labor union. The 3rd member shall be chairman of the board and shall represent the public interests of the State. Vacancies occurring during a term shall be filled for the unexpired term. The board shall hold a meeting on the 3rd Wednesday of September in each year and shall organize by choosing from its members a secretary. Members of the board shall each receive \$25 a day for their services, for the time actually employed in the discharge of their official duties. They shall receive their traveling and all other necessary expenses. The board shall from time to time make such rules of procedure as it deems necessary, and shall annually, on or before the first day of July, make a report to the Governor and Council, which shall be incorporated in and printed with the biennial report of the department. The appropriation for the board shall be included in the department's budget and authorization for expenditures shall be the responsibility of the commissioner.

Three alternate members, having the same qualifications as members, shall be appointed in the same manner and for the same terms as members, and shall, when serving as members of the board, have the same responsibilities and duties and be entitled to the same privileges and emoluments, as members.

Workers shall have full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from interfer-

ence, restraint or coercion by their employers or other persons, and it shall be the duty of the board to endeavor to settle disputes, strikes and lockouts between employers and employees.

R.S.1954, c. 30, § 15; 1955, c. 462, § 1; 1963, c. 17.

§ 912. Powers and duties

The board shall have the power to inquire and investigate. It shall have the authority to subpoena either party to a dispute.

The board's responsibility is to further harmonious labor-management relations in this State. They may serve as a board of inquiry, as a board of conciliation or as a board of arbitration.

1955, c. 462, § 2.

§ 913. Summoning witnesses; production of books and records

The board may summon as witness any operative or any person who keeps records of wages earned in the department of business in which the controversy exists and may require the production of books which contain the record of wages paid. Summonses may be signed and oaths administered by any member of the board. Witnesses summoned 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.

1955, c. 462, § 2.

§ 914. Recess of negotiations

When the board has taken jurisdiction of a case where a dispute exists, it may, at its discretion, recess the hearings for any reasonable purpose and may call a subsequent meeting as soon as practicable at any appropriate place or time which it may designate for a continuation of the proceedings.

1955, c. 462, § 2.

§ 915. Notification of strike; proceedings in settlement

Whenever it appears to the employer or employees concerned in a dispute that a strike is threatened, or actually occurs, he or they may request the services of the board and notification

may be given by the mayor of a city or the selectmen of a town or any citizen of the State directly involved.

If, when such request or notification is received, it appears that as many as 10 employees are directly concerned therein, the board shall endeavor, by conciliation, to obtain an amicable settlement; failing that, endeavor to persuade such employer and employees to submit the matter to arbitration by the board or a local board of arbitration.

Except in cases in which the public welfare is involved, a minimum of 3 working days' notice shall be required before the board will convene.

The board may, at its discretion, in any particular case, designate a local board established by the parties as set forth in section 920 as the board for the particular case.

When for any reason a member of the board does not serve in any particular case, the alternate member having the same qualifications shall act as a member of the board in such case.

No member of the board shall act as such in any case in which his personal interest is involved.

1955, c. 462, § 2.

§ 916. Inquiry into cause of controversy; conciliators; report

In any controversy where not less than 10 employees are directly concerned, the board shall, upon notification, as soon as practicable, visit the place where the controversy exists or arrange a meeting of the interested parties at a convenient place, and shall make careful inquiry into the cause of the dispute or controversy, and the board may, with the consent of the Governor, conduct such inquiry beyond the limits of the State.

The board shall hear all interested persons who come before it, advise the respective parties what ought to be done by either or both to adjust such controversy, and shall, when the case is finally settled, make a written report to the Governor and the commissioner.

1955, c. 462, § 2.

§ 917. Application for inquiry; notice of hearing

In cases of controversy, where conciliation, mediation or arbitration is refused by one of the parties, either party may request the board to make inquiry. The application for such in-

quiry may be signed by the employer or by a majority of the employees in the department of the business in which the controversy exists or by their agent or by both parties, and, if signed by an agent claiming to represent a majority of the employees, the board shall satisfy itself that he is duly authorized to do so.

Upon receipt of the application for such inquiry, the secretary shall give notice of time and place of hearing, and may, at the board's discretion, give public notice by publishing in at least one newspaper the time and place of the hearing.

The board shall, upon request of the Governor or the mayor of a city or the selectmen of a town, investigate and report upon any controversy if, in his opinion, it threatens to affect the public welfare.

The board, after such inquiry, may make and publish a report of its findings.

1955, c. 462, § 2.

§ 918. Submission to arbitration; decision

If the case cannot be settled through the process of conciliation, the interested parties may submit the case to arbitration by filing an arbitration application with the secretary or chairman of the board.

The secretary of the board shall forthwith after such filing give notice of the time and place of hearing to both parties.

1955, c. 462, § 2.

§ 919. Procedure in arbitration

In cases of arbitration, the parties concerned must submit in writing to the board the matters to which they mutually agree to submit to arbitration; the time limit that they agree to abide by the decision of the board; and such other details pertinent to the issues involved as they may agree upon, and a promise to continue in business or at work without any strike or lockout until the decision of the board is handed down if such decision is made within 3 weeks after the date of filing the application for arbitration. The contract of arbitration shall be signed by the responsible parties and witnessed by the board. When the matter is submitted to arbitration by the board, said board shall investigate the matters in controversy, shall hear all interested persons who come before it, and make a written decision thereof which shall be recorded by the secretary of the board. Said decisions shall be for 6 months, unless in the contract of arbitration a dif-

ferent time limit is specified, and shall be binding on the parties who join in the agreement or until the expiration of 60 days after either party has given notice to the other in writing of his decision not to be bound thereby. Such notice may be given to the employees by posting it in 3 conspicuous places in the shop, factory, yard, or other place where they work, and copy of such notice shall be filed with the secretary or chairman of the board.

1955, c. 462, § 2.

§ 920. Submission to local board; decision

On agreement of both parties in any controversy described in section 915, the state board may submit such controversy to a local board of arbitration selected by the state board and composed of 3 persons, one member shall be an employer of labor or selected from some association representing employers of labor, and another shall be an employee or an employee selected from some bona fide trade or labor union and not an employer of labor. The 3rd member shall be chairman of the board and shall represent the public interests of the State. Such board shall have all the powers exercised by the state board and the same requirement as to contract of arbitration must be met, and its decision shall have the same effect as that of the state board. The decision of said board shall be rendered within 10 days after the close of any hearing held by it and copies of the decision shall at once be forwarded to the parties to the contract of arbitration and a copy thereof shall be filed with the secretary of the state board. If the case is delegated to a local board by the state board, each of the members of the local board shall be entitled to receive \$15 for each day of actual service, to be paid by the Treasurer of State on a warrant drawn by the State Controller after approval by the chairman of the state board.

Whenever the parties to a dispute have submitted their case to either private mediators or arbitrators, or to a state or federal mediator, the board shall not take jurisdiction until requested to do so by the parties involved.

1955, c. 462, § 2.

§ 921. Advertising or soliciting for workers during strike or disturbance; exceptions; penalty

If any employer, during the continuance of a strike among his employees, or during the continuance of a lockout or other

labor trouble among his employees, publicly advertises in newspapers, or by posters or otherwise, for employees, or by himself or his agents solicits persons to work for him to fill the places of strikers, he shall plainly and explicitly mention in such advertisements or oral or written solicitations that a strike, lockout or other labor disturbance exists. If any employee, during the continuance of a strike, lockout or other labor trouble who advertises for or solicits business for a competitor of the employers engaged in the labor dispute, he shall plainly and explicitly mention in such advertisement or oral or written solicitations that a strike, lockout or other labor disturbance exists. This section shall cease to be operative when the board shall determine that the business of the employer, in respect to which the strike or other labor trouble occurred, is being carried on in the normal and usual manner and to the normal and usual extent. Said board shall determine this question as soon as may be, upon the application of the employer. Any person, firm, association or corporation who violates this section shall be punished by a fine of not less than \$250 nor more than \$500.

1955, c. 462, § 2.

§ 922. Proceedings confidential

Any information disclosed by either party to a dispute to the board or any of its members in carrying out this subchapter shall be confidential, except as provided in section 917.

1959, c. 223, § 3.

SUBCHAPTER III

**ARBITRATION PURSUANT TO COLLECTIVE
BARGAINING CONTRACTS**

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- 951. Agreements to arbitrate.
 - 952. Stay of proceedings.
 - 953. Failure to arbitrate under agreement.
 - 954. Appointment of arbitrators or umpires.
 - 955. Application heard as motion.
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 - 957. Awards; confirmation; jurisdiction; procedure.
 - 958. Vacation of award; grounds; rehearing.
 - 959. Modification or correction of award; grounds; order.
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§ 951. Agreements to arbitrate

A written provision in any collective bargaining contract to settle by arbitration a controversy thereafter arising out of such contract or out of the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, or such refusal, herein designated in this subchapter as "a written submission agreement," shall be valid, irrevocable and enforceable, save upon such grounds, independent of the provisions for arbitration, as exist at law or in equity for the revocation of any contract.

1957, c. 409.

§ 952. Stay of proceedings

If any action or proceeding be brought in any court upon any issue or controversy referable to arbitration under a written provision in any collective bargaining contract or under an agreement in writing for submission to arbitration of an existing controversy arising out of such collective bargaining contract, the court in which such action or proceeding is pending, upon being satisfied that the issue involved in such action or proceeding is thus referable to arbitration, shall on application of one of the parties stay the trial of the action or proceeding until such arbitration has been had in accordance with the terms of the collective bargaining contract or the written agreement for submission to arbitration, provided the applicant for the stay is not in default in proceeding with such arbitration.

1957, c. 409.

§ 953. Failure to arbitrate under agreement

A party aggrieved by the alleged failure, neglect or refusal of another to arbitrate in accordance with any agreement embraced within section 951 may institute proceedings in the Superior Court. Such proceedings shall be for an order directing that such arbitration proceed in the manner provided in the collective bargaining agreement or written submission agreement.

Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by law for the service of process in civil actions. The court shall hear the parties, and upon being satisfied that the making of the collective bargaining contract or the written submission agreement for arbitration or the failure to comply

therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the collective bargaining contract or the written submission agreement. If the making of the collective bargaining contract or of the written submission agreement for arbitration of the failure, neglect or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial is demanded by the party alleged to be in default, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by law for referring to a jury issues in actions not triable of right by a jury or may specially call a jury for that purpose. If the jury find that no collective bargaining contract or written submission agreement for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that a collective bargaining contract or written submission agreement for arbitration was made and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

1957, c. 409; 1961, c. 317, § 55.

§ 954. Appointment of arbitrators or umpires

If in the agreement provision is made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method is provided therein, or if a method is provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in agreement the arbitration shall be by a single arbitrator.

1957, c. 409.

§ 955. Application heard as motion

Any application to the court under this subchapter shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise expressly provided.

1957, c. 409.

§ 956. Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this subchapter or otherwise, or a majority of them, may summon in writing any person to attend before them, or any of them, as a witness and in a proper case to bring with him or them any book, record, document or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before the Superior Court. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the Superior Court. If any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon complaint, any Justice of the Superior Court may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the State of Maine.

1957, c. 409; 1961, c. 317, § 56.

§ 957. Awards; confirmation; jurisdiction; procedure

If the parties in their collective bargaining contract or written submission agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified or corrected as prescribed in sections 958 and 959. In the absence of such provision in the collective bargaining contract or written submission agreement of the parties, such application to have judgment entered upon the award may be made to the Superior Court in the county within which

such award was made. Notice of application shall be served upon the adverse party. If the adverse party is a resident of the State, such service shall be made upon the adverse party or his attorney as prescribed by law for service of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served in like manner as other process of the court is served upon nonresidents.

1957, c. 409; 1961, c. 317, § 57.

§ 958. Vacation of award; grounds; rehearing

In any of the following cases the Superior Court in and for the county wherein the award was made may make an order vacating the award upon the application of any party to the arbitration:

1. **Corruption, fraud or undue means.** Where the award was procured by corruption, fraud or undue means;

2. **Partiality or corruption in arbitrators.** Where there was obvious partiality or corruption in the arbitrators, or any of them;

3. **Abuse of discretion by arbitrators.** Where the arbitrators were guilty of abuse of discretion by which the rights of any party have been prejudiced;

4. **Arbitrators exceeded powers.** Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

1957, c. 409; 1961, c. 317, § 58.

§ 959. Modification or correction of award; grounds; order

The Superior Court in and for the county wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

1957, c. 409; 1961, c. 317, § 59.

§ 960. Applicability of provisions

This subchapter shall not apply to any provision or agreement relative to arbitration contained in a collective bargaining contract entered into prior to August 28, 1957, or to any agreement to submit to arbitration an existing controversy entered into prior to August 28, 1957.

1957, c. 409.