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**COLLECTIVE BARGAINING FOR
PUBLIC HIGHER EDUCATION PERSONNEL**

A Report Prepared for the 105th Maine Legislature

December 1, 1970

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1970

by the

MAINE EDUCATION COUNCIL

Printed under Appropriation 1680.1

APR 23 1985



STATE OF MAINE
MAINE EDUCATION COUNCIL

December 1, 1970

Dr. Lincoln T. Fish, Chairman
University of Maine at Portland-Corham
Corham, Maine 04038

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Superintendent of Schools
Westbrook School Department
Westbrook, Maine 04092

Honorable members of the 105th Legislature:

The Maine Education Council is pleased to present this report to the 105th Legislature through the joint Committee on Education.

The report contains the findings and recommendations of the Council with respect to the question of extending bargaining rights to the public higher education personnel.

The members of the Council were not in complete agreement on all facets of the report. However, the Council believes that the report will be helpful to the 105th Legislature in facing the emerging problems of negotiation with public employees.

The Council expects that a public legislative hearing will provide opportunity for representatives from all institutions, governing boards, campuses, and employee groups to participate in preparing the final legislation.

The Council is deeply indebted to Mr. Roger V. Snow, Jr., Coordinator of the Bureau of Labor Education of the University of Maine, for guiding the deliberations of the ad-hoc committee appointed by the Council to prepare the preliminary report and for writing the initial draft and the amendments to the present law.

There is one point on which the Council wishes its position to be clear. The Council is not recommending that higher education personnel engage in collective bargaining. The Council is recommending that higher education personnel be permitted to engage in collective bargaining if they so choose.

For the Maine Education Council,

Lincoln T. Fish, Chairman



UNIVERSITY OF MAINE *at Portland - Gorham*

Bureau of Labor Education

96 Falmouth Street
Portland, Maine 04103
207/773-2981

November 3, 1970

Maine Education Council
Lincoln T. Fish, Chairman
University of Maine, Portland-Gorham
Gorham, Maine 04038

Dear Ted:

We are pleased to submit herewith to the Maine Education Council a report of its ad-hoc committee on Desirability of Extending Collective Bargaining Rights to Public Higher Education Personnel.

The committee believes that public higher education personnel should have collective bargaining rights and believes that necessary legislation should be sought from the 105th Legislature.

The committee was established by the Maine Education Council to implement Senate Paper 648, dated January 28, 1970, passed by the 104th Legislature in special session. The paper ordered:

"The House concurring that the Maine Education Council, established under Chapter 54 of the Public Laws of 1967, is authorized and directed to study current practices in collective bargaining to determine the feasibility and the desirability of extending bargaining rights to public higher education personnel; and be it further

"ORDERED, that the council shall report its findings and recommendations to the Joint Committee on Education of the 105th Legislature."

A copy of this order, Senate Paper 648, is attached and made a part of the report.

The committee would like to note the valuable advice, research and assistance received from Professor Harvey L. Friedman, Assistant Director of the Labor Relations and Research Center at the University of Massachusetts, Amherst, Massachusetts.

For the ad-hoc committee

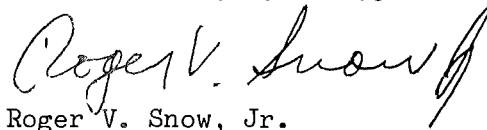

Roger V. Snow, Jr.

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BACKGROUND

The intent of Senate Paper 648 (see Exhibit I, Appendix A) was to ask the Maine Education Council to determine if it would be appropriate for the Legislature to authorize collective bargaining, including binding collective bargaining agreements, between administration and personnel of Maine's public institutions of higher education.

Senate Paper 468 also intended that the Council, should it determine collective bargaining desirable, should recommend timing and terms of necessary legislation to the Joint Committee on Education of the 105th Legislature, for possible implementation by that committee.

Collective bargaining between public employers and public employees spread rapidly and widely throughout the United States during the 1960's, including municipal, county, state, federal and quasi-public sectors. Unions and other organizations representing public employees have been growing at a faster rate than any other employee organizations.

In response to this trend, the 104th Maine Legislature enacted the Maine Municipal Public Employees Labor Relations Law, Chapter 424 P. L. 1969 as amended by Chapter 578 P. L. 1970, which set forth guidelines under which municipal employers may bargain collectively with their employees.

This law did not extend collective bargaining rights to State employers and employees, or to administrators and personnel of publicly-supported Maine institutions of higher education. It did not do so because legislators were persuaded first to extend the rights to municipal employers and employees, observe the process in action and

learn from the experience before widening such bargaining privileges.

Senate Paper 648 indicates that this report should take experience under the Municipal Public Employees Labor Relations Law into consideration, as well as experience elsewhere. The Senate Paper additionally reflects response to expressed interest by various employe organizations and by Maine members of the Association of University Professors (AAUP).

PROCEDURE

The scope of study suggested by Senate Paper 648 required a procedure to implement the order effectively. The following procedure was adopted:

1. Establishment of an ad-hoc committee which included membership from the Maine Education Council, reinforced by representation from concerned institutions of higher education and from appropriate areas of expertise within the State. Following is membership of the committee. Council members are indicated with an asterisk (*):

Mr. Ross Fearon
 Chairman, Department of Special Education
 University of Maine at Farmington
 President, Maine Chapter of American Association
 of University Professors

Mr. Herbert L. Fowle, Jr.
 Vice Chancellor, University of Maine

Dr. John Lindlof
 Associate Professor, College of Education
 University of Maine at Orono
 Past Conference President, American Association of
 University Professors

*Dr. Carroll R. McGary
 Superintendent of Schools, Westbrook School Department

Mr. Roger V. Snow, Jr.
 Coordinator of Bureau of Labor Education
 University of Maine

*Dr. Lincoln T. Fish
 Professor of Mathematics
 University of Maine at Portland-Gorham

Mr. Elwood A. Padham
 Director, Bureau of Vocational Education
 Maine Department of Education

2. A schedule of committee meetings:

March 25, 1970 - Augusta

May 21, 1970 - Augusta

August 24, 1970 - Augusta

October 23, 1970 - Portland

3. Exposure to outside expertise:

- a) Council member Dr. Stanley L. Freeman, Vice Chancellor, University of Maine, and committee member Mr. Herbert L. Fowle, Jr., Vice Chancellor, University of Maine, attended a conference on Collective Negotiations in the Academic Community, sponsored by Higher Education Executive Associates and College and University Business, April 16-18, 1970, in Albany New York.
- b) Committee members Dr. John Lindlof, Associate Professor, College of Education, University of Maine at Orono and Past Conference President, American Association of University Professors, and Mr. Roger V. Snow, Jr., Coordinator, Bureau of Labor Education, University of Maine, attended a national conference, Collective Negotiations in Higher Education, sponsored by the City University of New York, April 30, May 1 and 2 at the Waldorf-Astoria Hotel, New York City.
- c) Roger Snow developed files and other information on existing state legislation in other states and collective bargaining agreements from various higher education institutions in other states.

- d) The committee secured the services of Professor Harvey L. Friedman, Assistant Director of the Labor Relations and Research Center, University of Massachusetts, Amherst, Massachusetts, to consult and assist in preparation of this report. Professor Friedman is an officer of the University Labor Education Association, considered one of the country's leading educators and additionally as a lawyer and labor educator worked on development of the Massachusetts Labor Relations Law.
 - e) Met with Dr. Ralph A. Dungan, Chancellor, State Board of Higher Education, State of New Jersey.
4. Preparation of report to the Legislature, including suggestions for development of necessary legislation, as indicated.

DEFINITION OF TERMS

No attempt is made in this list of definitions to use legal terminology. Rather, definition is in lay language which hopefully will be meaningful to laymen as well as others.

Collective bargaining - Meetings between representatives of employers and employes during which real effort is made to resolve differences over working conditions, other terms of employment and other matters, permitted by law, which the parties agree should be part of a working agreement. It also includes reduction of that agreement to writing, its application to the day-to-day activities of the parties and the resolution of disputes arising in the normal course of the employer-employee relationship.

Collective bargaining agreement - The collective bargaining agreement is also referred to as a contract. It is a document setting forth terms of employment, working conditions and other matters upon which employer and employes agree. When signed, it becomes a legal document.

Bargaining agent - The bargaining agent is an organization, union or non-union (American Federation of Teachers, AFL-CIO, American Federation of State, County and Municipal Employees, AFL-CIO, traditional unions; or American Association of University Professors, Maine State Employees Association, non-union). The organization is chosen by the employes to represent them in the collective bargaining process with the employer.

Bargaining unit - One or more persons engaging in collective bargaining who have a common employer and who have a community of interest in their job. For example, all custodial employes of the University of

Maine, or all custodial employes on one campus; all non-supervisory faculty at the Maine Maritime Academy; all employes of Central Maine Vocational Technical Institute.

Negotiations - The process of collective bargaining.

Negotiators - The persons chosen by the employer and by the bargaining agent to represent them and speak for them in negotiations.

Public higher education - The committee considers this to mean education beyond high school (beyond Grade 12) which receives major financial support from state, county or municipal tax resources. Institutions presently so funded include the University of Maine, the State Vocational Technical Institutes and the Maine Maritime Academy.

Public higher education employes - Persons on the payroll of public higher education institutions, excepting for those who may, in the process of determining the bargaining unit, be declared managerial or supervisory employes.

Agency shop - Under an agency shop all employes represented by a bargaining agent pay service fees to it for representing them. The fees usually are less and cannot exceed union or organization dues.

SUMMARY OF RECOMMENDATIONS

The Maine Education Council makes the following recommendations to the 105th Legislature through the Joint Committee on Education.

1. The right to engage in collective bargaining should be extended to public higher education institutions and their employes, including faculty and other professional and non-professional employes.

2. Enactment by the 105th Legislature of necessary legislation, either in the form of amendments to the existing Municipal Public Employees Labor Relations Law or in the form of new legislation to establish collective bargaining rights for public higher education personnel. The Council would like to suggest appropriate amendments as the cleanest route.

- a) That such legislation create an independent agency - an Employment Relations Commission - to administer public sector labor relations, including bargaining unit determinations, to conduct representation elections, to hear and act on unfair labor practices (called prohibited acts in present state law), to coordinate, organize and supervise state-sponsored mediation, fact-finding and arbitration services, and to perform other functions deemed necessary by the Legislature.
- b) That the Legislature consider offering in such legislation a right to strike limited to situations where the public health or safety would not be endangered.
- c) That the Legislature give consideration to offering some form of union security in such legislation.

ARGUMENT

The Council believes that the right to bargain collectively should be extended to institutions of public higher education in the State of Maine for many reasons:

Extension of Bargaining Rights to Public Higher Education Personnel

1. All teachers and other employes of school systems in this state have the right. What is the difference between a math teacher in a Maine public high school and a professor of mathematics at the University of Maine which gives the former a voice in determining his salary and other working conditions and the latter, none? Why should a custodian in a high school have the right while a man with a similar job at a state vocational technical institute does not?
2. Employes in the private sector have enjoyed bargaining rights for years. Should public employes in general have lesser rights?
3. Faculty and other employes of public higher education institutions in other states have collective bargaining rights. Why shouldn't Maine?
4. Denial of collective bargaining rights is no guarantee of harmonious labor relations. In fact, the Council credits evidence that denial can lead to harmful frustrations.
5. The Council would note that extension of collective bargaining rights doesn't necessarily mean that they will be exercised at once and everywhere. In fact, it may take months or years

to work out first contracts. But the right will be there for employers and employes who choose to exercise it. This right is the most important aspect of democracy at the work place.

6. Good labor relations are the results of the interaction between strong, responsible management and strong, responsible employe organizations.

Maine Employment Relations Commission

1. The Council believes that if the Legislature should decide to extend collective bargaining rights to public higher education personnel, it may also decide to extend it to all employes of the State of Maine.
2. The Council believes that the workload imposed by covering public higher education personnel and all state employes for collective bargaining would overburden and render ineffective procedures in the existing Municipal Public Employees Labor Relations Law.
3. The Council believes that an independent state agency, adequately staffed, will be necessary to handle the resulting workload with sufficient dispatch to avoid frustration and resultant unrest in labor-management relationships.
4. The Council has been advised that the handling of prohibited practices through the courts, as required in the existing Municipal Public Employees Labor Relations Law can be slow, frustrating, cumbersome and self-defeating.

5. An independent agency, properly staffed, would develop expertise, consistency and dispatch in handling such matters as highly complex unit determination and prohibited practices and in offering mediation, fact-finding and arbitration services.

Limited Strike Authority

1. The Council realizes that public employes' right to strike is a sensitive issue, particularly in the State of Maine. On the other hand, the Council believes that Senate Paper 648 calls for the benefit of the Council's study and conclusions in this matter, sensitive though it may be.
2. It is national experience that strikes in public service occur, whether sanctioned or not sanctioned by law. One outstanding example of this is the Postal Workers' strike which took place in the Spring of 1970. Teachers, garbage workers, transit workers, hospital workers have also struck. When employes feel sufficiently frustrated, they will strike. The evidence is incontrovertible. The conclusion therefore must be that strike prohibitions can be ineffective.
3. The Council is advised by expert consensus, and believes that laws controlling strikes and providing other remedies are sounder and contribute more to labor-management harmony than laws which prohibit strikes.
4. Two states - Hawaii and Pennsylvania - have recently enacted laws permitting limited strikes in the public sector. Vermont and Montana appear to extend some sanction for strikes.

5. A variety of remedies exist to relieve impasses which could result in strikes. These would include mediation, fact finding, and various forms of arbitration. The Council believes that a state agency which can offer and encourage expert and effective services along these lines, and require their use in certain circumstances will do much to encourage good labor-management relations.

Union Security

In order to facilitate the development of responsible employe organization and to make more equitable the legal responsibility of representing all employes fairly and without discrimination, some form of union security should be developed.

The Council recommends that the "agency shop" be included as a bargainable item. This would make agency shop bargainable but not necessarily mandatory.

Agency shop is an arrangement under which all employes, whether members of the union or of the employe organization or not, who are represented by that organization, pay some sort of service fee to the organization.

GENERAL

It is perhaps worthwhile to take some note of the principal objections which have and may be raised to extension of bargaining rights to public higher education personnel and to the Council's other sub-recommendations.

1. The point has been made that it is extremely difficult to determine sound bargaining units in public higher education, particularly with respect to deciding "who is boss and who is employe." This is true because faculty has a powerful voice in much policy-making, because the status of department heads is unclear and because faculty representation is varied and cloudy.

The Council would point out, however, that collective bargaining is now taking place on many campuses and that these problems are being solved.

2. The point has been made that there has been no organized clamor by faculty in Maine's institutions of higher education for collective bargaining rights - and that the State should wait until there is a clamor. It is true that there is no such clamor.

The Council feels, however, that a clamor for collective bargaining rights will arise sooner or later - and that action now can avert potential unrest and lead ultimately to the best possible legislation, eliminating confusion and hard feelings which frequently derive from hasty action.

3. Some have questioned the cost of creating a Maine Employment Relations Commission and adding to a state bureaucracy already considered unwieldy.

The Council recognizes the expense of creating a really effective agency, but would like to point out that it would take over functions presently performed in the Department of Labor and Industry, the State

Panel of Mediators and the State Board of Arbitration and Conciliation. It would also raise the point that the presence of effective machinery to maintain good labor-management relations should enhance the attractiveness of the State for development.

4. The comment has many times been made that "the Legislature will never buy collective bargaining for public employes that doesn't include a strike prohibition, because the public is against strikes." This may be true, or untrue - the Council has no way of anticipating the views of any Legislature or of knowing real public views. The Council feels, however, that it must point out that this is the only argument it has heard against limited strikes, and it feels that it is a weak argument in the face of evidence that limited strike authority works against chaos and frustration in labor-management relations while limited strike authority, coupled with strong impasse procedures, work for good labor-management relations.

In conclusion, the Council has recommended amending the present Municipal Public Employees Labor Relations Law over the drafting of new legislation. This deserves explanation.

Expert advice has indicated to the Council that better labor-management relations result from the uniformity and relation simplicity of one law governing all public sector relations, as opposed to several laws governing different types of employment. The Council would note that the 104th Maine Legislature evidently concurred with this view when it combined an earlier statute for fire fighters and a request from a teachers' organization for their own statute into one law embracing all municipal public employes.

STATE OF MAINE

In Senate January 28, 1970

Ordered, the House concurring, that the Maine Education Council, established under chapter 452 of the public laws of 1967, is authorized and directed to study current practices in collective bargaining to determine the feasibility and the desirability of extending bargaining rights to public higher education personnel; and be it further

ORDERED, that the council shall report its findings and recommendations to the Joint Committee on Education of the 105th Legislature.

IN SENATE CHAMBER
TABLED BY SEN. SEN. KATZ
OF OF BUSINESS

HOUSE OF REPRESENTATIVES
READ AND PASSED

SP 648

JAN 28 1970

JAN 29 1970
IN CONCURRENCE

PENDING *Message*
SPEC. ASSIGN'D FOR JAN 29 1970
HARRY N. STANBRANCH, Secretary

Arthur W. Johnson
CLERK

IN SENATE CHAMBER *taken from the Table*
by PRESIDENT

Ordered sent down with

JAN 29 1970
READ AND PASSED
SENT DOWN FOR CONCURRENCE
HARRY N. STANBRANCH, Secretary

(Katz)

Name: *[Signature]*

County: Kennebec

APPENDIX A, EXHIBIT II

AMENDING THE MUNICIPAL PUBLIC EMPLOYEES LABOR RELATIONS LAW

CHAPTER 9-A TITLE 26

(CHAPTER 424 P. L. 1969)
as amended by Chapter 578 P. L. 1970

The subcommittee believes that the amendments suggested below to the Municipal Public Employees Labor Relations Law indicate approximately how that law may be amended to cover public higher education personnel in accordance with the subcommittee's recommendations.

The subcommittee would note, however, that the suggested changes in this form would affect those presently covered by the law as well as public higher education personnel, and that it is not the subcommittee's responsibility to suggest the regulation of collective bargaining for employes other than public higher education personnel.

The amendments are intended to convey only the thrust of the subcommittee's thinking. A legislative draftsman should put them in proper form.

AN ACT Extending Collective Bargaining Rights
to Public Higher Education Personnel

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

R. S., T 26, c. 9-A (C. 424 P. L. 1969 as amended by c. 578 P. L. 1970), # 962, # 964, # 965, # 966, # 967, # 968, #971, # 972 are amended to read as follows:

962. Definitions

As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings:

1. ~~Appeals-board.~~ EMPLOYMENT RELATIONS COMMISSION. "EMPLOYMENT RELATIONS COMMISSION" MEANS THE MAINE EMPLOYMENT RELATIONS COMMISSION REFERRED TO IN SECTION 968.

2. Bargaining agent. "Bargaining agent" means any lawful organization, association or individual representative of such 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 or the ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION to be the choice of the majority of the unit as their representative.

3. ~~Commissioner.~~ Professional employee. "Professional employee" means any employee engaged in work:

A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

B. Involving the consistent exercise of discretion and judgment in its performance;

C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and

D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, mental, manual or physical processes.

4. **Department.** Public employee. "Public employee" means any employee of a public employer except any person:

A. Elected by popular vote; or

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer; or

C. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head or division head of the applicable bargaining unit; or

D. Who is a department head or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the executive head or body of the public employer; or

E. Who is a superintendent or assistant superintendent of a school

system; or

F. Who has been employed less than 6 months.

G. Who is a temporary, seasonal or on-call employee.

5. Public employer. "Public employer" means any officer, board, commission, council, committee or other persons or body acting on behalf of any municipality or town or any subdivision thereof, or of any school, water, sewer or other district, OR, FOR THE PURPOSES OF THIS ACT, ANY SCHOOL, COLLEGE OR UNIVERSITY PROVIDING EDUCATION BEYOND 12TH GRADE AND RECEIVING ONE THIRD OR MORE OF ITS OPERATING FUNDS BY DIRECT APPROPRIATION FROM THE STATE OF MAINE OR FROM ANY MUNICIPALITY, OR SCHOOL DISTRICT THEREOF, OR BOTH.

6. AGENCY SHOP. AGENCY SHOP IS AN ARRANGEMENT UNDER WHICH ALL EMPLOYEES, WHETHER MEMBERS OF THE UNION OR THE EMPLOYEE ORGANIZATION OR NOT, WHO ARE REPRESENTED BY THAT ORGANIZATION, PAY SOME SORT OF SERVICE FEE TO THE ORGANIZATION.

#964. Prohibited acts of public employers, public employees and public employee organizations.

1. Public employer prohibitions. Public employers, their representatives and their agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963;

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 965;

F. Blacklisting of any employee organization or its members for the purpose of denying them employment, BECAUSE OF THE EXERCISE OF THEIR RIGHTS UNDER SECTION 963.

2. Public employee prohibitions. Public employees, public 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 963, or a public employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances;

B. Refusing to bargain collectively with a public employer as required by section 965;

C. Engaging in

(1) A work stoppage WHICH WILL IRREPARABLY INJURE THE PUBLIC HEALTH AND SAFETY.

(2) A slowdown WHICH WILL IRREPARABLY INJURE THE PUBLIC HEALTH AND SAFETY.

(3) A strike WHICH WILL IRREPARABLY INJURE THE PUBLIC HEALTH AND SAFETY.

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

3. Violations. ~~Violations of this section may be enjoined upon complaint of any party affected by such violation. Sections 5 and 6 shall apply to any such injunction proceedings.~~ THE EMPLOYMENT RELATIONS COMMISSION MAY ISSUE CEASE AND DESIST ORDERS UPON COMPLAINT OF ANY PARTY AFFECTED BY SUCH VIOLATION AND UPON FINDING BY THE COMMISSION THAT THE FACTS ALLEGED IN THE COMPLAINT ARE TRUE AND CONSTITUTE A VIOLATION OF SECTION 964, except that neither an allegation nor proof of unavoidable substantial or irreparable injury to the complainant's property shall be required. ~~to obtain a temporary restraining order of injunction.~~ In connection therewith, ~~actions~~ COMPLAINTS may be brought by or against any unincorporated employee organization in the name by which it is known.

#965. Obligation to bargain

1. Negotiations. It shall be the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purposes 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 the parties have not otherwise agreed in a prior written contract;
- C. To confer and negotiate in good faith with respect to wages, hours, working conditions, THE AGENCY SHOP and contract grievance arbitration except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies for the purpose of this paragraph, educational policies shall not include wages, hours, THE

AGENCY SHOP working conditions or contract grievance arbitration, TENURE, TEACHING LOAD, NOR TEACHING DUTIES AND APPROPRIATE PHYSICAL FACILITIES AND TEACHING AIDS.

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed 3 years; and

E. To participate in good faith in the fact-finding and arbitration procedures required by this section.

Whenever wages, rates of pay or any other matter requiring appropriation of money by any municipality, SCHOOL DISTRICT, OR THE STATE are included as a matter of collective bargaining conducted pursuant to this chapter, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget.

2. Mediation. Mediation procedures shall be followed whenever the parties jointly agree to use such services, OR IF REQUESTED UNILATERALLY, OR IF SOUGHT BY A STATE OR FEDERAL MEDIATION SERVICE.

3. Fact-finding. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the ~~Maine-Board-of-Arbitration-and-Mediation~~ EMPLOYMENT RELATIONS COMMISSION for fact-finding services with recommendations or to pursue some other mutually acceptable fact-finding procedure. If the parties do not jointly agree to call upon the ~~Maine-Board-of-Arbitration-and-Mediation~~ EMPLOYMENT RELATIONS COMMISSION or to jointly pursue some other procedure, THEN either party to the controversy may request the ~~commission~~ EMPLOYMENT RELATIONS COMMISSION to assign A FACT-FINDER OR a fact-finding board.

If so requested, the ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION shall appoint A FACT-FINDER OR a fact-finding board, ordinarily of 3 members, in accordance with rules and procedures prescribed by the ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION for making such appointment. The FACT-FINDER OR THE fact-finding board shall be appointed from a list maintained by the ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION and drawn up after consultation with representatives of state and local government administrators, agencies with industrial relations and personnel functions and representatives of employee organizations and of employers. Any person who has actively participated as the mediator in the immediate proceedings for which fact-findings has been called shall not sit AS A FACT-FINDER OR on that fact-finding board. The FACT-FINDER OR board shall hear the contending parties to the controversy. ~~It~~ THE FACT-FINDER OR BOARD may request statistical data and reports on its own initiative in addition to the data regularly maintained by the ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION. THE FACT-FINDER OR FACT-FINDERS SHALL HAVE THE POWER TO 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 REPRESENTED TO THEM FOR DETERMINATION. The FACT-FINDER OF THE members of the fact-finding board shall submit their findings and recommendations to the parties only.

The parties shall have a period of 30 days, after the receipt of findings and recommendations from the fact finder OR BOARD, in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of said period, either party may, but not until the end of said period unless the parties

otherwise jointly agree, make the fact-finding and recommendations public.

4. Arbitration. As enacted.

5. Costs. The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator including, if any, per diem expenses, and actual and necessary travel and subsistence expense and the costs of hiring the premises where any mediation, fact-finding or arbitration proceedings are conducted, will be shared equally by the parties to the arbitration. All other costs will be assumed by the party incurring them. The services of the members ~~of the State of Maine's Panel of Mediators and of the Maine Board of Arbitration and Conciliation are available to the parties without cost.~~ OF MEDIATORS AND OTHER PERSONNEL SUPPLIED BY THE EMPLOYMENT RELATIONS COMMISSION ARE AVAILABLE WITHOUT COST, TO THE PARTIES, NECESSARY FEES AND EXPENSES WILL BE PAID BY THE COMMISSION.

#966. Bargaining unit; how determined

In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION shall make the determination, except that anyone excepted from the definition of public employee under section 962 may not be included in a bargaining unit. TO ASSIST in determining whether a supervisory position should be excluded from coverage under this chapter, the ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION shall PROMULGATE REASONABLE REGULATIONS. ~~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-ether-established-personnel policies-and-procedures-and-in-enforeing-the-provisions-of-a-collective bargaining-agreement-or-establishing-or-partieipating-in-the-establishment-of-performace-standards-for-subordinate-employees-and-taking-corrective measures-to-implement-these-standards.--Nothing-in-this-chapter-is-intended to-require-the-exclusion-of-prineipals,-assistant-prineipals,-ether-super-visory-employees-from-school-system-bargaining-units-which-include teachers-and-nurses-in-supervisery-positions.~~

The ~~emmissioner~~ EMPLOYMENT RELATIONS COMMISSION shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof and no unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, except that teachers may be included in a unit consisting of other certificated employees.

IN DETERMINING COMMUNITY OF INTEREST, THE EMPLOYMENT RELATIONS COMMISSION SHALL CONSIDER SUCH FACTORS AS (1) SIMILAR WORKING CONDITIONS, (2) COMMON SUPERVISION, (3) PHYSICAL LOCATION.

IN DETERMINING APPROPRIATE BARGAINING UNITS FOR PUBLIC HIGHER EDUCATION PERSONNEL, THE EMPLOYMENT RELATIONS COMMISSION SHALL NOT

INCLUDE PROFESSIONAL FACULTY, PROFESSIONAL NON-FACULTY, CLASSIFIED EMPLOYEES AND NONSUPERVISORY ADMINISTRATIVE EMPLOYEES FOR MEMBERSHIP IN THE SAME UNIT UNLESS A MAJORITY OF SUCH EMPLOYEES VOTE FOR INCLUSION IN THE SAME UNIT.

#967. Determination of bargaining agent

1. Voluntary recognition. As enacted.

2. Elections. The ~~Comissioner~~ EMPLOYMENT RELATIONS COMMISSION upon signed request of a public employer alleging that one or more public employees or public employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of public employees, or upon signed petition of at least 30% of a bargaining unit of public employees that they desire to be represented by an organization, shall conduct a secret election to determine whether the organization represents a majority of the members in the bargaining unit.

The ballot...as enacted.

Whenever 30%...as enacted.

The bargaining agent certified by the ~~commissiener~~ EMPLOYMENT RELATIONS COMMISSION as the exclusive bargaining agent shall be required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, provided that any public employee at any time may present his grievance to the public employer and have such 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 such grievance.

All bargaining units...as enacted.

#968. Right of appeal

Whenever any party is aggrieved by any ruling or determination of ~~the commissioner~~ under section 966 and 967, such party may appeal, within 15 days after the announcement of the ruling or determination, to the ~~Public-Employees-Labor-Relations-Appeal-Board~~ MAINE EMPLOYMENT RELATIONS COMMISSION hereinafter established.

1. ~~Public-Employees-Labor-Relations-Appeals-Board.~~ MAINE EMPLOYMENT RELATIONS COMMISSION. The ~~Public-Employees-Labor-Relations-Appeals Board~~ MAINE EMPLOYMENT RELATIONS COMMISSION shall consist of 3 members to be appointed by the Governor, ~~with the advice and consent of the Council.~~ The Governor, in making his appointments, shall name one to represent public employees, one to represent public employers ~~and school systems~~ and the 3rd to represent the public, who shall be its chairman. Members of the board, EXCEPT THE CHAIRMAN, shall each receive ~~\$50~~ \$100 a day for their services, for the time actually employed in the discharge of their official duties AND SHALL BE REIMBURSED FOR NECESSARY EXPENSES INCURRED IN THE DISCHARGE OF THEIR DUTIES. THE CHAIRMAN SHALL SERVE FULL TIME AND RECEIVE A SALARY SET BY THE GOVERNOR. The term of each member shall be for a period of 4 years, EXCEPT THAT THE ONE REPRESENTING PUBLIC EMPLOYEES SHALL BE INITIALLY APPOINTED TO SERVE A TERM OF 3 YEARS AND THE MEMBER REPRESENTING THE PUBLIC EMPLOYERS SHALL INITIALLY BE APPOINTED TO A TERM OF 2 YEARS. ~~The members of the appeals board shall receive necessary expense on the approval of the Commissioner of Labor and Industry.--The commissioner shall designate a member of the Department of Labor and~~

~~industry-to-be-the-permanent-secretary-to-the-appeals-board,-who-shall maintain-a-record-of-all-proceedings-of-the-appeals-board.~~

The ~~appeals-board~~ MAINE EMPLOYMENT RELATIONS COMMISSION shall from time to time adopt such rules of procedure as it deems necessary for the orderly conduct of its business, 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-appeals-board-shall-be-included-in-the-department's-budget-and-authorization-for-expenditures-shall-be-the-responsibility-of-the-commissioner.~~

The ~~appeals-board~~ MAINE EMPLOYMENT RELATIONS COMMISSION shall sit at the call of the chairman ~~to-hear-and-decide-appeals-arising-from-determinations-of-the-commissioner.~~ Decisions of the ~~appeals-board~~ MAINE EMPLOYMENT RELATIONS COMMISSION shall be subject to review by the Superior Court in the manner specified in section 972.

The ~~appeals-board~~ EMPLOYMENT RELATIONS COMMISSION shall have the authority to recommend to the Legislature changes or additions to this chapter or of related enactments of law.

2. Summoning witnesses; production of books and records. The ~~appeals-board~~ EMPLOYMENT RELATIONS COMMISSION may summon as witnesses any employee or any person in the department who keeps records of wages earned in the 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 ~~appeals board~~ EMPLOYMENT RELATIONS COMMISSION. Witnesses summoned by the

~~appeals-beard~~ EMPLOYMENT RELATIONS COMMISSION shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees together with all necessary expenses of the ~~appeals-beard~~ EMPLOYMENT RELATIONS COMMISSION shall be paid by the Treasurer of State on warrants drawn by the State Controller.

3. Hearings. The ~~appeals-beard~~ EMPLOYMENT RELATIONS COMMISSION shall, upon receipt of ~~an-appeal~~ A REQUEST FOR A HEARING by the chairman and at the call of the chairman, hold, within 10 days, a hearing ~~on-the-appeal~~. The chairman shall give at least 7 days' notice in writing of the time and place of hearing to each of the other 2 members, the aggrieved parties, the labor organizations or bargaining agent and the public employer.

The hearings shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the ~~appeals beard~~ EMPLOYMENT RELATIONS COMMISSION may be received in evidence. The chairman shall have the power to administer oaths and to 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 them for determination.

The hearings conducted by the ~~appeals-beard~~ EMPLOYMENT RELATIONS COMMISSION shall be concluded within 20 days of the time of commencement of the hearings. Within 10 days after the conclusion of the hearings the ~~appeals-beard~~ EMPLOYMENT RELATIONS COMMISSION shall make written findings and a written statement upon the appeal presented, a copy of

which shall be mailed or otherwise delivered to the labor organization or bargaining agent of its attorney or other designated representative and the public employer.

4. APPROPRIATION. THERE IS APPROPRIATED FROM THE GENERAL FUND TO THE EMPLOYMENT RELATIONS COMMISSION THE SUM OF \$70,000 FOR THE FISCAL YEAR ENDING JUNE 30, 1972, AND THE SUM OF \$77,500 FOR THE FISCAL YEAR ENDING JUNE 30, 1973. THE BREAKDOWN SHALL BE AS FOLLOWS:

MAINE EMPLOYMENT RELATIONS COMMISSION

	<u>1971-72</u>	<u>1972-73</u>
Personal Services	\$75,000	\$82,000
All Other	<u>23,500</u>	<u>20,000</u>
	\$98,500	\$102,000

#971. Rules and regulations

The ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION may issue such rules and regulations as the ~~commissioner~~ EMPLOYMENT RELATIONS COMMISSION may consider necessary or appropriate for carrying out the purposes of sections 966 and 967.

#972. Review

Either party may seek a review by the Superior Court of a binding determination by an arbitration panel or a decision of the ~~Public-Employees Labor-Relations-Appeal-Board~~ EMPLOYMENT RELATIONS COMMISSION. Such review shall be sought in accordance with Rule 80 B of the Rules of Civil Procedure.

The binding determination of an arbitration panel or arbitrator or the decision of the ~~Public-Employees-Labor-Relations-Appeal-Board~~ EMPLOYMENT RELATIONS COMMISSION, in the absence of fraud, upon all questions of fact shall be final. The Court may, after consideration,

