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No. 1177

S.P. 363

In Senate, March 12, 2019

An Act To Improve Public Sector Labor Relations

Reference to the Committee on Labor and Housing suggested and ordered printed.

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

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Representative McCREA of Fort Fairfield and
Senators: BELLOWS of Kennebec, CHIPMAN of Cumberland, VITELLI of Sagadahoc,
Representatives: CUDDY of Winterport, MARTIN of Sinclair.

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

2 **Sec. 1. 26 MRSA §965, sub-§4**, as amended by PL 1975, c. 564, §18, is further
3 amended to read:

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

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

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

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

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

21 **Sec. 2. 26 MRSA §979-D, sub-§4, ¶D**, as enacted by PL 1973, c. 774, is
22 amended to read:

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

28 **Sec. 3. 26 MRSA §1026, sub-§4, ¶B**, as amended by PL 1983, c. 153, §2, is
29 further amended to read:

30 B. If the controversy is not resolved by the parties themselves, the arbitrators shall
31 proceed as follows: ~~With respect to a controversy over salaries, pensions and~~
32 ~~insurance, the arbitrators will recommend terms of settlement and may make findings~~
33 ~~of fact; such recommendations and findings will be advisory only and will be made,~~
34 ~~if reasonably possible, within 60 days after the selection of the neutral arbitrator. The~~
35 ~~arbitrators may in their discretion make such recommendations and findings public,~~
36 ~~and either party may make such recommendations and findings public if agreement is~~
37 ~~not reached with respect to such findings and recommendations within 10 days after~~
38 ~~their receipt from the arbitrators. With~~ with respect to a controversy over all subjects
39 ~~other than salaries, pensions and insurance,~~ the arbitrators shall make determinations
40 with respect thereto if reasonably possible within 60 days after the selection of the
41 neutral arbitrator. Such determinations may be made public by the arbitrators or
42 either party and if made by a majority of the arbitrators, such determinations ~~will be~~
43 are binding on both parties and the parties ~~will~~ shall enter an agreement or take
44 whatever other action that may be appropriate to carry out and effectuate such
45 binding determinations, and such determinations ~~will be~~ are subject to review by the

1 Superior Court in the manner specified by section 1033. The results of all arbitration
2 proceedings, recommendations and awards conducted under this section ~~shall~~ must be
3 filed with the Maine Labor Relations Board at the offices of its executive director
4 simultaneously with the submission of the recommendations and award to the parties.
5 In the event the parties settle their dispute during the arbitration proceeding, the
6 arbitrator or the ~~chairman~~ chair of the arbitration panel ~~will~~ shall submit a report of
7 ~~his~~ the arbitrator's or chair's activities to the Executive Director of the Maine Labor
8 Relations Board not more than 5 days after the arbitration proceeding has terminated.

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

11 **4. Arbitration.**

12 A. In addition to the 30-day period referred to in subsection 3, the parties ~~shall~~ have
13 15 more days, making a total of 45 days from the submission of findings and
14 recommendations, in which to make a good faith effort to resolve their controversy.

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

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

30 (2) Comparison of the wages, hours and working conditions of the employees
31 involved in the arbitration proceeding with the wages, hours and working
32 conditions of other employees performing similar services in the executive and
33 legislative branches of government and in public and private employment in
34 other jurisdictions competing in the same labor market;

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

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

- 1 (5) The need of the Judicial Department for qualified employees;
- 2 (6) Conditions of employment in similar occupations outside State Government;
- 3 (7) The need to maintain appropriate relationships between different occupations
- 4 in the Judicial Department; and
- 5 (8) The need to establish fair and reasonable conditions in relation to job
- 6 qualifications and responsibilities.

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

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

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

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

28 **SUMMARY**

29 This bill:

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

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

37 3. Amends the labor relations laws governing judicial employees to provide that an
38 arbitrator's determinations with respect to controversies over all subjects, including
39 salaries, pensions and insurance, are final and binding on the parties and that, with respect

1 to controversies over salaries, determinations by mediator-arbitrators are final and
2 binding on the parties.