

CHAPTER 12

UNIVERSITY OF MAINE SYSTEM LABOR RELATIONS ACT

§1021. Purpose

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of the University of Maine System employees, Maine Maritime Academy employees and community college employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment. [PL 1989, c. 443, §60 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §1 (AMD). PL 1977, c. 581, §1 (AMD). PL 1985, c. 497, §6 (AMD). PL 1985, c. 506, §B20 (AMD). PL 1985, c. 779, §71 (AMD). PL 1989, c. 443, §60 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF).

§1022. Definitions

As used in this chapter, the following terms shall, unless the context requires a different interpretation, have the following meanings. [PL 1975, c. 603, §1 (NEW).]

1. Bargaining agent.

[PL 1975, c. 671, §2 (RP).]

1-A. Academy. "Academy" means the Maine Maritime Academy and its activities and functions supervised by its board of trustees or their designee. In the furtherance of this chapter, the academy shall be considered as a single employer and employment relations, policies and practices throughout the academy shall be as consistent as practicable. It is the responsibility of the board of trustees of the academy or their designee to negotiate collective bargaining agreements and to administer such agreements. The board of trustees of the academy or their designee is responsible for the employer functions of the academy under this chapter and shall coordinate its collective bargaining activities. For purposes of consistency elsewhere in this chapter, references to the university shall be construed to include and to apply to the Maine Maritime Academy, its board of trustees, and its employees. [PL 1975, c. 671, §3 (NEW).]

1-B. Bargaining agent. "Bargaining agent" means any lawful organization, association or individual representative of such organization or association, which has as one of its primary purposes the representation of employees in their employment relations with employers and which has been certified by the Executive Director of the Maine Labor Relations Board. [PL 1975, c. 671, §3 (NEW).]

1-C. Community college. "Community college" means the Maine state community colleges and their activities and functions supervised by the Board of Trustees of the Maine Community College System or its designee. The employment relations, policies and practices throughout the community colleges shall be as consistent as possible. It is the responsibility of the board of trustees or its designee to negotiate collective bargaining agreements and administer these agreements. The board of trustees or its designee is responsible for employer functions of the community colleges under this chapter and shall coordinate its collective bargaining activities with campuses or units on matters of community college concern. In addition to its responsibilities to the public generally, the board of trustees shall have the specific responsibility of considering and representing the interests and welfare of the students in any negotiations under this chapter.

A. [PL 1987, c. 816, Pt. R (RP).]
[PL 1989, c. 443, §61 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

2. Board. "Board" means the Maine Labor Relations Board as defined in section 968, subsection 1.
[PL 1975, c. 671, §4 (AMD).]

3. Board of Trustees. "Board of Trustees" means the Board of Trustees of the University of Maine System, the Board of Trustees of the Maine Maritime Academy or the Board of Trustees of the Maine Community College System.
[PL 1989, c. 443, §62 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

4. Classified employee. "Classified employee" means any employee not engaged in professional work as defined in subsection 7.
[PL 1975, c. 603, §1 (NEW).]

5. Cost items. "Cost items" means the provisions of a collective bargaining agreement which require specific funding.
[PL 1975, c. 603, §1 (NEW).]

6. Executive Director. "Executive Director" means the Executive Director of the Maine Labor Relations Board as defined in section 968, subsection 2.
[PL 1975, c. 671, §5 (AMD).]

7. 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; [PL 1975, c. 603, §1 (NEW).]

B. Involving the consistent exercise of discretion and judgment in its performance; [PL 1975, c. 603, §1 (NEW).]

C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and [PL 1975, c. 603, §1 (NEW).]

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.
[PL 1975, c. 603, §1 (NEW).]

[PL 1975, c. 603, §1 (NEW).]

8. Regular employee. "Regular employee" means any professional or classified employee who occupies a position that exists on a continual basis.
[PL 1975, c. 603, §1 (NEW).]

9. Supervisory employee. "Supervisory employee" means any employee whose principal work tasks 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, in applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.
[RR 2009, c. 2, §75 (COR).]

10. University. "University" means all campuses or units of the university, represented by the board of trustees or its designee. In the furtherance of this chapter, the university shall be considered as

a single employer and employment relations, policies and practices throughout the university shall be as consistent as practicable. It is the responsibility of the board of trustees or its designee to negotiate collective bargaining agreements and to administer such agreements. The board of trustees or its designee is responsible for the employer functions of the university under this chapter and shall coordinate its collective bargaining activities with campuses or units on matters of university concern. In addition to its responsibilities to the public generally, the university shall have the specific responsibility of considering and representing the interests and welfare of the students in any negotiations under this chapter.

[PL 1975, c. 721, §1 (AMD).]

11. University, academy or community college employee. "University, academy or community college employee" means any regular employee of the University of Maine System, the Maine Maritime Academy or the Maine Community College System performing services within a campus or unit, except any person:

A. Appointed to office pursuant to law; [PL 1987, c. 402, Pt. A, §156 (RPR).]

B. Appointed by the Board of Trustees as a vice-president, dean, director or member of the chancellor's, superintendent's or Maine Community College System executive director's immediate staff; or [PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF); PL 2003, c. 76, §1 (AMD); PL 2003, c. 76, §4 (AFF).]

C. Whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the university, the academy or the Maine Community College System. [PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF); PL 2003, c. 76, §1 (AMD); PL 2003, c. 76, §4 (AFF).]

D. [PL 2003, c. 76, §1 (RP); PL 2003, c. 76, §4 (AFF).]

[PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF); PL 2003, c. 76, §1 (AMD); PL 2003, c. 76, §4 (AFF).]

SECTION HISTORY

PL 1975, c. 564, §38 (AMD). PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §§2-6 (AMD). PL 1975, c. 721, §1 (AMD). PL 1977, c. 581, §§2,3 (AMD). PL 1979, c. 602, §5 (AMD). PL 1985, c. 497, §7 (AMD). PL 1985, c. 506, §§B21,22 (AMD). PL 1985, c. 695, §§13-15 (AMD). PL 1985, c. 779, §§72,73 (AMD). PL 1987, c. 402, §§A155,A156 (AMD). PL 1987, c. 532, §6 (AMD). PL 1987, c. 816, §R (AMD). PL 1989, c. 443, §§61-63 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 76, §1 (AMD). PL 2003, c. 76, §4 (AFF). RR 2009, c. 2, §75 (COR).

§1023. Right of university, academy or community college employees to join or refrain from joining labor organizations; prohibition

A person may not directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against a university, academy or community college employee or a group of university, academy or community college employees in the free exercise of their rights, given by this section, to voluntarily: [PL 2007, c. 415, §10 (RPR).]

1. Join a union. Join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining or in the free exercise of any other right under this chapter; or [PL 2007, c. 415, §10 (NEW).]

2. Not join a union. Refrain from joining or participating in the activities of organizations for the purposes of representation and collective bargaining, except that an employee may be required to pay to the organization that is the bargaining agent for the employee a service fee that represents the

employee's pro rata share of those expenditures that are germane to the organization's representational activities.

[PL 2007, c. 415, §10 (NEW).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §7 (AMD). PL 1977, c. 581, §4 (RPR). PL 1985, c. 497, §8 (AMD). PL 1985, c. 506, §B23 (AMD). PL 1985, c. 737, §A63 (RPR). PL 1989, c. 443, §64 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2007, c. 415, §10 (RPR).

§1024. Bargaining units

(REPEALED)

SECTION HISTORY

PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §8 (RPR). PL 1975, c. 697, §§13,14 (AMD). PL 1975, c. 721, §2 (AMD). PL 1975, c. 770, §117 (AMD). PL 1977, c. 581, §§5-7 (AMD). PL 1977, c. 641 (AMD). PL 1979, c. 541, §A172 (RP).

§1024-A. Bargaining units

1. Legislative intent. It is the express legislative intent that, in order to foster meaningful collective bargaining, units shall be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a university system-wide basis with one unit for each of the following occupational groups:

- A. Faculty; [PL 1979, c. 541, Pt. B, §31 (NEW).]
- B. Professional and administrative staff; [PL 1979, c. 541, Pt. B, §31 (NEW).]
- C. Clerical, office, laboratory and technical; [PL 1979, c. 541, Pt. B, §31 (NEW).]
- D. Service and maintenance; [PL 1979, c. 541, Pt. B, §31 (NEW).]
- E. Supervisory classified; and [PL 1979, c. 541, Pt. B, §31 (NEW).]
- F. Police. [PL 1979, c. 541, Pt. B, §31 (NEW).]

It is intended that Cooperative Extension Service employees be included in appropriate units. [PL 1985, c. 506, Pt. B, §24 (AMD).]

2. Academy units. It is the express legislative intent to foster meaningful collective bargaining for employees of the Maine Maritime Academy. Therefore, in accordance with this policy, bargaining units shall be structured with one unit for each of the following occupational groups:

- A. Faculty; [PL 1979, c. 541, Pt. B, §31 (NEW).]
 - B. Administrative staff; and [PL 1979, c. 541, Pt. B, §31 (NEW).]
 - C. Classified employees. [PL 1979, c. 541, Pt. B, §31 (NEW).]
- [PL 1979, c. 541, Pt. B, §31 (NEW).]

3. Community colleges. It is the express legislative intent to foster meaningful collective bargaining for employees of the community colleges. Therefore, in accordance with this policy, the bargaining units shall be structured with one unit in each of the following occupational groups:

- A. Faculty and instructors; [PL 1985, c. 695, §16 (RPR).]
- B. Administrative staff; [PL 1985, c. 695, §16 (RPR).]
- C. Supervisory; [PL 1985, c. 695, §16 (NEW).]
- D. Support services; [PL 1985, c. 695, §16 (NEW).]

E. Institutional services; and [PL 1985, c. 695, §16 (NEW).]

F. Police. [PL 1985, c. 695, §16 (NEW).]
[PL 1989, c. 443, §65 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

4. Assignment to bargaining units. In the event of a dispute over the assignment of jobs or positions to a unit, the executive director shall examine the community of interest, including work tasks among other factors, and make an assignment to the appropriate statutory bargaining unit set forth in subsection 1, 2 or 3.

[PL 1979, c. 541, Pt. B, §31 (NEW).]

5. Additional bargaining units. Notwithstanding subsection 1, 2 or 3, the Legislature recognizes that additional or modified university system-wide units, academy units or community college units may be appropriate in the future. The employer or employee organizations may petition the executive director for the establishment of additional or modified university system-wide units, academy units or community college units. The executive director or a designee shall determine the appropriateness of those petitions, taking into consideration the community of interest and the declared legislative intent to avoid fragmentation whenever possible and to insure employees the fullest freedom in exercising the rights guaranteed by this chapter. The executive director or a designee conducting unit determination proceedings may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them.

[PL 1989, c. 443, §66 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

6. Students.

A. When collective bargaining is to take place between the university and the faculty or professional and administrative staff, the board of trustees shall appoint 3 currently enrolled students who are broadly representative of the various campuses to meet and confer with the university and who may meet and confer with the bargaining agent prior to collective bargaining. [PL 1979, c. 541, Pt. B, §31 (NEW).]

B. During the course of collective bargaining, the student representatives designated under paragraph A shall be allowed to meet and confer with the university bargaining team at reasonable intervals during the course of negotiations, these meetings to occur at least upon receipt by the university of the initial bargaining proposal of the bargaining agent and before final agreement on a contract or any major provisions thereof. The students shall be bound by the same rules of negotiation, including, but not limited to, those regarding confidentiality, as the participants in the negotiations. [PL 1979, c. 541, Pt. B, §31 (NEW).]

[PL 1979, c. 541, Pt. B, §31 (NEW).]

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

[PL 1979, c. 541, Pt. B, §31 (NEW).]

SECTION HISTORY

PL 1979, c. 541, §B31 (NEW). PL 1985, c. 497, §9 (AMD). PL 1985, c. 506, §B24 (AMD). PL 1985, c. 695, §16 (AMD). PL 1985, c. 737, §A64 (AMD). PL 1989, c. 443, §§65,66 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF).

§1025. Determination of bargaining agent

1. Voluntary recognition. Any employee organization may file a request with the university, academy or community colleges alleging that a majority of the university, academy or community college employees in an appropriate bargaining unit as established in section 1024, wish to be represented for the purpose of collective bargaining between the university, academy or community colleges and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the university, academy or community colleges unless the university, academy or community colleges desire that an election determine whether the organization represents a majority of the members in the bargaining unit. In the event that the request for recognition is granted by the university, academy or community colleges, the executive director shall certify the organization so recognized as the bargaining agent.

[PL 1989, c. 443, §67 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

2. Elections.

A. The executive director of the board, upon signed request of the university, academy or community college alleging that one or more university, academy or community college employees or employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of university, academy or community college employees, or upon signed petition of at least 30% of a bargaining unit of university, academy or community college employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members of the bargaining unit. Such an election may be conducted at suitable work locations or through the United States mail, and the procedures adopted and employed must ensure that neither the employee organizations or the management representatives involved in the election have access to information that would identify a voter. [PL 1991, c. 622, Pt. O, §10 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

B. The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the university, academy or community college employees within the unit, together with a choice for any university, academy or community college employee to designate that the employee does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot, and no one of the 3 or more choices receives a majority vote of the university, academy or community college employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the university, academy or community colleges as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director as not representing a majority of the unit. [PL 1989, c. 443, §68 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

C. Whenever 30% of the employees in a bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth. [PL 1975, c. 603, §1 (NEW).]

D. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question

concerning unit or representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement. [PL 1975, c. 603, §1 (NEW).]

E. The bargaining agent certified by the executive director or a designee as the exclusive bargaining agent for a unit is required to represent all the university, academy or community college employees within the unit without regard to membership in the organization certified as bargaining agent, except that any university, academy or community college employee may present at any time that employee's grievance to the employer and have that grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of any collective bargaining agreement then in effect and the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of that grievance. [PL 1991, c. 166 (NEW); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

[PL 1991, c. 622, Pt. O, §10 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §§9,10 (AMD). PL 1977, c. 581, §§8,9 (AMD). PL 1985, c. 497, §10 (AMD). PL 1985, c. 506, §B25 (AMD). PL 1989, c. 443, §§67,68 (AMD). PL 1991, c. 166 (AMD). PL 1991, c. 622, §O10 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF).

§1026. Obligation to bargain

1. Negotiations. It is the obligation of the university, academy, community college or state schools for practical nursing and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

A. To meet at reasonable times; [PL 1989, c. 878, Pt. A, §71 (RPR).]

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes if the parties have not otherwise agreed in a prior written contract; [PL 1993, c. 84, §1 (AMD).]

C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party is compelled to agree to a proposal or required to make a concession; [PL 1993, c. 84, §1 (AMD).]

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation, but not to exceed 3 years; and [PL 1989, c. 878, Pt. A, §71 (RPR).]

E. To participate in good faith in the mediation, fact finding and arbitration procedures required by this section. [PL 1989, c. 878, Pt. A, §71 (RPR).]

[PL 1993, c. 84, §1 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

1-A. Additional bargaining; community college employees. Cost items in any collective bargaining agreement of community college employees must be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, all cost items submitted must be returned to the parties for further bargaining. "Cost items" includes salaries, pensions and insurance.

Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subsection may not be submitted in the same legislation that contains cost items for employees exempted from the definition of "community college employee" under section 1022, subsection 11.

[PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF); PL 2003, c. 76, §2 (AMD); PL 2003, c. 76, §4 (AFF).]

2. Mediation.

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and employees or their representatives through mediation. [PL 1975, c. 603, §1 (NEW).]

B. Mediation procedures, as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Maine Labor Relations Board or its executive director. [PL 1975, c. 671, §12 (AMD).]

C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions. [PL 1975, c. 671, §12 (AMD).]

D. Nothing in this section shall be construed as preventing the parties, as an alternative to mediation under section 965, from jointly agreeing to elect mediation from either the Federal Mediation and Conciliation Service or the American Arbitration Association, in accordance with the procedures, rules and regulations of those organizations. [PL 1975, c. 603, §1 (NEW).]

E. Any information disclosed by either party to a dispute to a mediator or to a mediation panel or any of its members in the performance of this subsection shall be privileged. [PL 1975, c. 603, §1 (NEW).]

[PL 1975, c. 671, §12 (AMD).]

3. Fact-finding.

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Labor Relations Board to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and Conciliation, or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations. [PL 1975, c. 671, §13 (AMD).]

B. If the parties do not jointly agree to call upon the Maine Labor Relations Board or to pursue some other procedure, either party to the controversy may request the executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making such appointments. [PL 1975, c. 671, §13 (AMD).]

C. The fact-finding proceedings shall be as provided by section 965, subsection 3. [PL 1975, c. 603, §1 (NEW).]

[PL 1975, c. 671, §13 (AMD).]

4. Arbitration.

A. At any time after participating in the procedures set forth in subsections 2 and 3, either party, or the parties jointly, may petition the board to initiate arbitration procedures. On receipt of the petition, the executive director shall within a reasonable time determine if an impasse has been reached; the determination must be made administratively, with or without hearing, and is not subject to appeal. If the executive director so determines, the executive director shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties, within 10 days after the issuance of the order, have not selected an arbitrator or a Board of Arbitration, the

executive director shall then order each party to select one arbitrator and the 2 arbitrators so selected shall select a 3rd neutral arbitrator. If the 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the executive director shall submit identical lists to the parties of 5 or more qualified arbitrators of recognized experience and competence. Each party has 7 days from the submission of the list to delete any names objected to, number the remaining names indicating the order of preference and return the list to the executive director. In the event a party does not return the list within the time specified, all parties named therein are deemed acceptable. From the arbitrators who have been approved by both parties and pursuant to the order of mutual preference, the executive director shall appoint a neutral arbitrator. If the parties fail to agree upon any arbitrators named, or if for any other reason the appointment cannot be made from the initial list, the executive director shall then submit a 2nd list of 5 or more additional qualified arbitrators of recognized experience and competence from which they shall strike names with the determination as to which party shall strike first being determined by a random technique administered through the Executive Director of the Maine Labor Relations Board. Thereafter, the parties shall alternately strike names from the list of names submitted, provided that, when the list is reduced to 4 names, the 2nd from the last party to strike shall be entitled to strike 2 names simultaneously, after which the last party to strike shall so strike one name from the then 2 remaining names, such that the then remaining name shall identify the person who must then be appointed by the executive director as the neutral arbitrator.

Nothing in this subsection may be construed as preventing the parties, as an alternative to procedures in the preceding paragraph, from jointly agreeing to elect arbitration from either the Federal Mediation and Conciliation Service or the American Arbitration Association, under the procedures, rules and regulations of that association, provided that these procedures, rules and regulations are not inconsistent with paragraphs B and C. [RR 2009, c. 2, §76 (COR).]

B. If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: With respect to a controversy over salaries, pensions and insurance, the arbitrators will recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within 60 days after the selection of the neutral arbitrator. The arbitrators may in their discretion make such recommendations and findings public, and either party may make such recommendations and findings public if agreement is not reached with respect to such findings and recommendations within 10 days after their receipt from the arbitrators. With respect to a controversy over subjects other than salaries, pensions and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within 60 days after the selection of the neutral arbitrator. Such determinations may be made public by the arbitrators or either party and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations, and such determinations will be subject to review by the Superior Court in the manner specified by section 1033. The results of all arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration proceeding, the arbitrator or the chairman of the arbitration panel will submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated. [PL 1983, c. 153, §2 (AMD).]

C. In reaching a decision under this section, the arbitrators shall consider the following factors:

- (1) The interests and welfare of the students and the public and the financial ability of the university, academy or community colleges to finance the cost items proposed by each party to the impasse;

(2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the wages, hours and working conditions of other employees performing similar services in public and private employment competing in the same labor market;

(3) The overall compensation presently received by the employees, including direct salary and wage compensation, vacation, holidays, life and health insurance, retirement and all other benefits received;

(4) Such other factors not confined to the factors set out in subparagraphs (1) to (3), which are normally and traditionally taken into consideration in the resolution of disputes involving similar subjects of collective bargaining in public higher education;

(5) The need of the university, academy or community colleges for qualified employees;

(6) Conditions of employment in similar occupations outside the university, academy or community colleges;

(7) The need to maintain appropriate relationships between different occupations in the university, academy or community colleges; and

(8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities. [PL 1989, c. 443, §70 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

[RR 2009, c. 2, §76 (COR).]

5. Costs. The following costs must be shared equally by the parties to the proceedings: the costs of the fact-finding board, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the neutral arbitrator or arbitrators, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the Federal Mediation and Conciliation Service or the American Arbitration Association; and the costs of hiring the premises where any fact-finding or arbitration proceedings are conducted. All other costs must be assumed by the party incurring them. The services of the Panel of Mediators and the State Board of Arbitration and Conciliation and any state allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the Panel of Mediators and the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing or the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

[PL 1991, c. 798, §7 (AMD).]

SECTION HISTORY

PL 1975, c. 564, §38 (AMD). PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §§11-16 (AMD). PL 1975, c. 717, §7 (AMD). PL 1977, c. 581, §§10-13 (AMD). PL 1979, c. 501, §4 (AMD). PL

1983, c. 127 (AMD). PL 1983, c. 153, §§1,2 (AMD). PL 1985, c. 6 (AMD). PL 1985, c. 497, §§11,12 (AMD). PL 1985, c. 506, §§B26,27 (AMD). PL 1985, c. 737, §§A65,66 (AMD). PL 1989, c. 443, §§69,70 (AMD). PL 1989, c. 596, §N5 (AMD). PL 1989, c. 878, §A71 (AMD). PL 1991, c. 622, §O11 (AMD). PL 1991, c. 798, §7 (AMD). PL 1993, c. 84, §1 (AMD). PL 1999, c. 16, §F1 (AMD). PL 2001, c. 559, §JJ1 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 76, §2 (AMD). PL 2003, c. 76, §4 (AFF). RR 2009, c. 2, §76 (COR).

§1027. Prohibited acts of the university, university employees and university employee organizations

1. University, academy and community colleges; prohibitions. The university, its representatives and agents, the academy, its representatives and agents and the community colleges, their representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023; [PL 1975, c. 603, §1 (NEW).]

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; [PL 1975, c. 603, §1 (NEW).]

C. Dominating or interfering with the formation, existence or administration of any employee organization; [PL 1975, c. 603, §1 (NEW).]

D. Discharging or otherwise discriminating against an employee because the employee has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; [PL 1989, c. 443, §71 (AMD).]

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 1026; [PL 2007, c. 415, §11 (AMD).]

F. Blacklisting of any employee organization or its members for the purpose of denying them employment; [PL 2007, c. 415, §12 (AMD).]

G. Requiring an employee to join a union, employee association or bargaining agent as a member; and [PL 2007, c. 415, §13 (NEW).]

H. Terminating or disciplining an employee for not paying union dues or fees of any type. [PL 2007, c. 415, §14 (NEW).]

[PL 2007, c. 415, §§11-14 (AMD).]

2. University, academy, community colleges; prohibitions. University employees, university employee organizations, their agents, members and bargaining agents; academy employees, academy employee organizations, their agents, members and bargaining agents; and community college employees, community college 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 1023 or the university, academy and community colleges in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances; [PL 1989, c. 443, §72 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

B. Refusing to bargain collectively with the university, academy and community colleges as required by section 1026; and [PL 1989, c. 443, §72 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

C. Engaging in:

(1) A work stoppage, slowdown or strike; and

(2) The blacklisting of the university, academy or community colleges for the purpose of preventing them from filling employee vacancies. [PL 1989, c. 443, §72 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

[PL 1989, c. 443, §72 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

3. Negotiation of union security. Nothing in this chapter shall be interpreted to prohibit the negotiation of union security, excepting closed shop.

[PL 1975, c. 603, §1 (NEW).]

3-A. Negotiation of initial probationary period. The length and terms of an employee's probationary period upon initial employment is a negotiable item in accordance with the procedures set forth in section 1026, except that, at a minimum, the probationary period must include the first 6 months of the employee's active employment. During the initial 6 months of active employment, an employee may be terminated without just cause.

[PL 2003, c. 76, §3 (NEW); PL 2003, c. 76, §4 (AFF).]

4. Violations. Violations of this section shall be processed by the board in the manner provided in section 1029.

[PL 1975, c. 603, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §§17-20 (AMD). PL 1977, c. 78, §165 (AMD). PL 1977, c. 581, §§14,15 (AMD). PL 1985, c. 497, §§13,14 (AMD). PL 1985, c. 506, §§B28,29 (AMD). PL 1985, c. 737, §A67 (AMD). PL 1989, c. 443, §§71,72 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 76, §3 (AMD). PL 2003, c. 76, §4 (AFF). PL 2007, c. 415, §§11-14 (AMD).

§1028. Rule making procedure and review of proceedings

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

[PL 1975, c. 603, §1 (NEW).]

2. Review of representation proceedings. Any person aggrieved by any ruling or determination of the executive director under sections 1024-A and 1025 may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board. Upon receipt of such an appeal, the board shall within a reasonable time hold a hearing, having first caused 7 days' notice, in writing, of the time and place of the hearings to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. The hearings and the procedures established in furtherance thereof must be in accordance with section 968. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance with the standards specified in section 972, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

[PL 2007, c. 695, Pt. C, §17 (AMD).]

SECTION HISTORY

PL 1975, c. 564, §38 (AMD). PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §21 (AMD). PL 1975, c. 697, §15 (AMD). PL 1975, c. 770, §115 (AMD). PL 1991, c. 143, §6 (AMD). PL 1993, c. 90, §6 (AMD). PL 2007, c. 695, Pt. C, §17 (AMD).

§1029. Prevention of prohibited acts

1. Board power to prevent prohibited acts. The board is empowered, as provided, to prevent any person, the university, any university employee, any university employee organizations, the academy, any academy employees, any academy employee organizations, the community colleges, any community college employee, any community college employee organizations; or any bargaining agent from engaging in any of the prohibited acts enumerated in section 1027. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

[PL 1989, c. 443, §73 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

2. Complaints. The university, any university employee, any university employee organization, the academy, any academy employee, any academy employee organization, the community colleges, any community college employee, any community college employee organization, or any bargaining agent which believes that any person, the university, any university employee, any university employee organization, the academy, any academy employee, any academy employee organization, the community colleges, any community college employee, any community college employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. No such complaint shall be filed with the executive director until the complaining party shall have served a copy thereof upon the party named in the complaint. Upon receipt of such complaint, the executive director or a designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing for the prehearing conference or the hearing, as appropriate, provided that no hearing shall be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of shall have the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in that proceeding and to present testimony. Nothing in this subsection may restrict the right of the board to require the executive director or a designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as the executive director or a designee may deem appropriate, subject to review by the board.

[PL 1989, c. 443, §74 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

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

[PL 1975, c. 603, §1 (NEW).]

4. Dismissals. After hearing and argument, if, upon a preponderance of the evidence received, the board shall not be of the opinion that the party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall, in writing, state its findings of fact and the reasons for its conclusions and shall issue an order dismissing said complaint.

[PL 1975, c. 603, §1 (NEW).]

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

[PL 1975, c. 603, §1 (NEW).]

6. Simultaneous injunctive relief. Whenever a complaint is filed with the executive director of the board alleging that the university, academy or community colleges have violated section 1027, subsection 1, paragraph F, or alleging that an employee, employee organization or bargaining agent of the university, academy or community colleges have violated section 1027, subsection 2, paragraph C, the party making the complaint may simultaneously seek injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to such matter.

[PL 1989, c. 443, §75 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing and shall cause all interested parties and the board to be notified. The hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision or order is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

[PL 2011, c. 559, Pt. A, §28 (AMD).]

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

[PL 1975, c. 603, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 564, §38 (AMD). PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §§22-25 (AMD). PL 1975, c. 697, §§16-18 (AMD). PL 1977, c. 581, §§16-18 (AMD). PL 1979, c. 541, §A173 (AMD). PL 1985, c. 497, §§15-17 (AMD). PL 1985, c. 506, §§B30-32 (AMD). PL 1985, c. 737, §§A68,69 (AMD). PL 1989, c. 443, §§73-75 (AMD). PL 1991, c. 143, §7 (AMD). RR 1993, c.

1, §69 (COR). PL 1993, c. 90, §7 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2011, c. 559, Pt. A, §28 (AMD).

§1030. Hearings

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

[PL 1975, c. 603, §1 (NEW).]

2. Power of chairman. 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 the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

[PL 1975, c. 603, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW).

§1031. Scope of binding contract arbitration

A collective bargaining agreement between the university, the academy or the community colleges and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the specific terms of collective bargaining agreement. An arbitrator with the power to make binding decisions pursuant to any such provisions shall have no authority to add to, subtract from or modify the collective bargaining agreement. [PL 1989, c. 443, §76 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §26 (AMD). PL 1977, c. 581, §19 (AMD). PL 1985, c. 497, §18 (AMD). PL 1985, c. 506, §B33 (AMD). PL 1985, c. 737, §A70 (RPR). PL 1989, c. 443, §76 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF).

§1032. Suits by and against unincorporated employee organizations

In any judicial proceeding brought under this chapter or to enforce any of the rights guaranteed by this chapter, any unincorporated employee organization may sue or be sued in the name by which it is known. [PL 1975, c. 603, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW).

§1033. Review of arbitration awards

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

[PL 1979, c. 541, Pt. A, §174 (AMD).]

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

[PL 1975, c. 603, §1 (NEW).]

3. Power of reviewing court. The court may, after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action.

[PL 1975, c. 603, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW). PL 1979, c. 541, §A174 (AMD).

§1034. Separability

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

[PL 1975, c. 603, §1 (NEW).]

2. No restriction on eligibility for federal grant-in-aid or assistance programs. Nothing in this chapter or any contract negotiated pursuant to this chapter may in any way be interpreted or allowed to restrict or impair the eligibility of the university, any of its campuses or units, academy or community colleges in obtaining the benefits under any federal grant-in-aid or assistance programs.

[PL 1989, c. 443, §77 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

SECTION HISTORY

PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §27 (AMD). PL 1977, c. 581, §20 (AMD). PL 1985, c. 497, §19 (AMD). PL 1985, c. 506, §B34 (AMD). PL 1989, c. 443, §77 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF).

§1035. Publication of initial proposals

Either party to negotiations may publicize the parties' written initial collective bargaining proposals. No proposals may be publicized until 10 days after both parties have made their initial proposal. [PL 1979, c. 125, §3 (NEW).]

SECTION HISTORY

PL 1979, c. 125, §3 (NEW).

§1036. Continuation of grievance arbitration provisions

If a contract between a public employer and a bargaining agent signed after October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract remain in effect until the parties execute a new contract. In any arbitration that is conducted pursuant to this section, an arbitrator shall apply only those provisions enforceable by virtue of the static status quo doctrine and may not add to, restrict or modify the applicable static status quo following the expiration of the contract, unless the parties have otherwise agreed in the collective bargaining agreement. All such grievances that are appealed to arbitration are subject exclusively to the grievance and arbitration process contained in the expired agreement and the board does not have jurisdiction over such grievances. The arbitrator's determination is subject to appeal pursuant to the Uniform Arbitration Act. Disputes over which provisions in an expired contract are enforceable by virtue of the static status quo doctrine first must be resolved by the board, subject to appeal pursuant to applicable law. The grievance arbitration is stayed pending resolution of this issue by the board. The board may adopt rules as necessary to establish a procedure to implement the intent of this section. Rules adopted

pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Nothing in this section expands, limits or modifies the scope of any grievance arbitration provisions, including procedural requirements. [PL 2005, c. 324, §3 (NEW).]

SECTION HISTORY

PL 2005, c. 324, §3 (NEW).

§1037. Bargaining agent access

1. Bargaining agent access to employees. The university, academy or community college shall provide to a bargaining agent access to members of the bargaining unit that the bargaining agent exclusively represents. Access must include, but is not limited to, the following:

A. The right to meet with individual employees on the premises of the university's, academy's or community college's workplace during the work day to investigate and discuss grievances, workplace-related complaints and other workplace issues; [PL 2019, c. 389, §3 (NEW).]

B. The right to conduct workplace meetings during lunch and other breaks, and before and after the work day, on the university's, academy's or community college's premises to discuss workplace issues, collective bargaining negotiations, the administration of collective bargaining agreements and other matters related to the duties of a bargaining agent and internal bargaining agent matters involving the governance or the business of the bargaining agent; [PL 2019, c. 389, §3 (NEW).]

C. The right to meet with newly hired employees, without charge to the pay or leave time of the employees, for a minimum of 30 minutes or for an amount of time agreed upon by all parties, not later than 10 calendar days after receipt of the information provided pursuant to subsection 2, during new employee orientations or, if the university, academy or community college does not conduct new employee orientations, at individual or group meetings; and [PL 2019, c. 389, §3 (NEW).]

D. The right to use the e-mail system of the university, academy or community college to communicate with bargaining unit members regarding official bargaining agent matters including, but not limited to, elections, meetings and social activities, as long as the use of the e-mail system does not create an unreasonable burden on the university's, academy's or community college's network capabilities or system administration. [PL 2019, c. 389, §3 (NEW).]

[PL 2019, c. 389, §3 (NEW).]

2. Bargaining agent access to employee information. The university, academy or community college shall provide to a bargaining agent access to information about members of the bargaining unit that the bargaining agent exclusively represents, as follows.

A. Not later than 30 calendar days after the date of hire for an employee, the university, academy or community college shall provide the following information to a bargaining agent in spreadsheet file format or another format agreed to by the bargaining agent:

- (1) Name;
- (2) Job title;
- (3) Workplace location;
- (4) Home address;
- (5) Work telephone numbers;
- (6) Home telephone and personal cellular telephone numbers, if known;
- (7) Work e-mail address;
- (8) Personal e-mail address, if known; and
- (9) Date of hire. [PL 2019, c. 389, §3 (NEW).]

B. The following are not public records as defined in Title 1, section 402, subsection 3 and are confidential and may not be disclosed by the university, academy or community college, except as provided in paragraph A:

- (1) Home addresses, home or personal telephone numbers, personal e-mail addresses and dates of birth of employees;
- (2) Names of employees within a bargaining unit; and
- (3) Communications between a bargaining agent and its members. [PL 2019, c. 389, §3 (NEW).]

[PL 2019, c. 389, §3 (NEW).]

3. Bargaining agent access to university, academy or community college buildings and facilities. The bargaining agent has the right to use university, academy and community college buildings and other facilities that are owned or leased by the university, academy or community college to conduct meetings with bargaining unit members regarding bargaining negotiations, the administration of collective bargaining agreements, the investigation of grievances, other workplace-related complaints and issues and internal matters involving the governance or business of the bargaining agent, as long as that use does not interfere with operations. A bargaining agent conducting a meeting in a university, academy or community college building or facility pursuant to this section may be charged for maintenance, security and other costs related to the use of the university, academy or community college building or facility that would not otherwise be incurred by the university, academy or community college.

[PL 2019, c. 389, §3 (NEW).]

4. Employee may opt out. After an initial meeting pursuant to subsection 1, paragraph C, an employee may opt out of receiving any further communications from a bargaining agent or allowing a bargaining agent to have any further access to that employee's information described in subsection 2, paragraph A, except for communications related to direct representation of that employee by a bargaining agent.

[PL 2019, c. 389, §3 (NEW).]

5. Selling or sharing nonmember data prohibited. A bargaining agent may not sell or share the information provided in accordance with subsection 2, paragraph A of an employee who is not a member of an employee organization except for the purpose of fulfilling the agent's collective bargaining obligations.

[PL 2019, c. 389, §3 (NEW).]

Nothing in this section may be construed to limit the terms of a collective bargaining agreement that provide a bargaining agent with greater rights of access to employees than the rights established by this section. [PL 2019, c. 389, §3 (NEW).]

SECTION HISTORY

PL 2019, c. 389, §3 (NEW).

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