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An Act To Provide Collective Bargaining Protections for Alternative Organizational Structure Employees

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

Sec. 1. 20-A MRSA §1464, sub-§5 is enacted to read:

5. Bargaining units of employees of school unions. For purposes of section 1463, subsection 4, a school union that employed public employees, within this section and the meaning of Title 26, section 962, subsection 6, who were represented by a bargaining agent on the day prior to the operational date of a regional school unit board of directors, is considered to be a school administrative unit.

Sec. 2. PL 2007, c. 240, Pt. XXXX, §36, sub-§2, ¶C, as enacted by PL 2007, c. 668, §42, is amended to read:

C. A notice of intent to engage in planning and negotiations with other school administrative units for the purpose of developing a reorganization plan to form an alternative organizational structure in accordance with this paragraph.

(1) A school administrative unit may be designated by the commissioner as part of an alternative organizational structure. The commissioner may designate a school administrative unit as part of an alternative organizational structure if the commissioner finds that the proposed organizational structure will result in:

(a) Consolidation of system administration;

(b) Consolidation of special education administration, transportation administration and administration of business functions including accounting, reporting, payroll, financial management, purchasing insurance and auditing;

(c) Adoption of a core curriculum and procedures for standardized testing and assessment aligned with the system of learning results established in Title 20-A, section 6209; and

(d) Adoption of consistent school policies and school calendars and a plan for consistent collective bargaining agreements.

A plan for an alternative organizational structure may include a collaborative agreement under chapter 114 and must include an interlocal agreement under Title 30-A, chapter 115. The plan must include procedures for conducting a kindergarten through grade 12 budget approval pursuant to subparagraph (2).

(2) The budget procedures of members of an alternative organizational structure must conform to the format and referendum procedures set forth in sections 1485 and 1486 for regional school units except for the time limits pursuant to section 1486, subsection 2. The budget validation referendum for all members of the alternative organizational structure must be conducted on the same day.

(3) If, in a reorganization plan to form an alternative organizational structure, or in the subsequent operation of an alternative organizational structure, the school administrative units intend to consolidate any services, programs or functions in which persons are employed who are public employees within the meaning of the Maine Revised Statutes, Title 26, section 962, subsection 6 so that such persons will be employed by the alternative organizational structure, the provisions of section 36-A relating to employment and collective bargaining must be followed.

Sec. 3. PL 2007, c. 240, Pt. XXXX, §36-A is enacted to read:

Sec. 36-A. Alternative organizational structures; employment; collective bargaining

1. Transfer of teachers and employees. Except as limited by paragraph A, all teachers and school employees who are employed by a member school unit prior to the operational date of the alternative organizational structure to provide services to be consolidated must be transferred to and employed by the alternative organizational structure as of the operational date of the alternative organizational structure. Except as otherwise reserved in this section by the member school units, the alternative organizational structure shall assume all of the legal obligations and duties that the member school units owed to their employees who are employed to provide consolidated services, including but not limited to those obligations and duties arising under federal law, state law, collective bargaining agreements and individual employment contracts. Nothing in this section may be construed to decrease or increase the rights and benefits of transferred employees or the employer. The alternative organizational structure shall also maintain and honor any agreements, contracts or policies regarding the rights and benefits of retirees and former employees who were employed to provide consolidated services that were created by a member school unit.

A. Teachers or other employees who are employed to provide consolidated services whose employment terminates by application of law or contract or by action of a member school unit before the operational date of the alternative organizational structure may not be transferred.

B. Teachers and other employees who are employed to provide consolidated services and who are transferred to the alternative organizational structure prior to the completion of the applicable probationary period for their position must have the length of their probationary period calculated from the date of their most recent date of employment by the member school unit.

C. Teachers and other employees who are employed by the member school units for purposes other than to provide consolidated services may not be transferred to the alternative organizational structure and must remain employed by the member school units.

2. Collective bargaining. This subsection governs collective bargaining.

A. On and after the operational date of the alternative organizational structure, teachers and other employees who had been employed by a member school unit to provide services to be consolidated and whose positions were included in a bargaining unit represented by a bargaining agent continue to be included in the same bargaining unit and be represented by the same bargaining agent pending completion of the bargaining agent and bargaining unit merger procedures and bargaining for initial alternative organizational structure-wide collective bargaining agreements, as described in this paragraph. During a transitional period commencing on the operational date of

the alternative organizational structure and ending with the completion of bargaining for initial alternative organizational structure-wide collective bargaining agreements, each member school unit continues to have the public employer's obligations, duties, liabilities and rights under the Maine Revised Statutes, Title 26, chapter 9-A with respect to its employees who were transferred to the alternative organizational structure as of the operational date, including the duty and authority on behalf of the alternative organizational structure to enter into collective bargaining agreements that will take effect after the operational date. During the transitional period, each member school unit also has those obligations, duties, liabilities and rights under Title 26, chapter 9-A with respect to any teachers or other school employees who are hired by the alternative organizational structure after the operational date to provide consolidated services to the students of that member school unit. The continuing responsibilities of the member school units during the transitional period include:

(1) Continued recognition of all bargaining agents that represented any bargaining units of employees who were employed by a member school unit;

(2) Continued observance of all existing collective bargaining agreements between bargaining agents and a member school unit, which agreements must also be assumed by and are binding upon the alternative organizational structure and continue in effect for the remainder of their unexpired terms unless the bargaining agent and member school unit mutually agree otherwise; and

(3) Collective bargaining for agreements to succeed the collective bargaining agreements that are in effect on the operational date of the alternative organizational structure and for any interim agreement that may be required thereafter to align the expiration dates of all agreements in each alternative organizational structure-wide bargaining unit to be formed in accordance with this section. Any such agreements that are negotiated by a member school unit and a bargaining agent must also be assumed by and be binding upon the alternative organizational structure, which shall exercise its authority to administer consolidated services and supervise teachers and other school employees who are employed by the alternative organizational structure to provide consolidated services in a manner that is consistent with the terms of the collective bargaining agreements. An agreement that is executed by a member school unit and a bargaining agent after the operational date that applies to teachers and other school employees who are employed to provide consolidated services may not have an expiration date later than August 31, 2012.

B. Upon the completion of the transitional period described in this section, all bargaining units of alternative organizational structure employees must be structured on an alternative organizational structure-wide basis. Teachers and other school employees who are employed by the alternative organizational structure to provide consolidated services must be severed from the existing units of teachers and other employees who are employed by each member school unit and merged into units of alternative organizational structure employees who are employed to provide consolidated services. Bargaining units must be structured on an alternative organizational structure-wide basis. Severance from bargaining units of employees in member school units who perform services that have not been consolidated and merger into alternative organizational structure-wide bargaining units are not subject to approval or disapproval of employees. Formation of alternative organizational structure-wide bargaining units must occur in accordance with this paragraph.

C. In each alternative organizational structure in which employees are employed to perform consolidated services, there must be one unit of teachers and, to the extent they are on the effective date of this paragraph included in bargaining units, other certified professional employees, excluding principals and other administrators.

D. Any additional bargaining units in an alternative organizational structure must be structured as follows.

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

(2) In the event of a dispute regarding the classifications to be included within an alternative organizational structure-wide bargaining unit, the current bargaining agent or agents or the alternative organizational structure may petition the Maine Labor Relations Board to determine the appropriate unit in accordance with this section and the Maine Revised Statutes, Title 26, section 966, subsections 1 and 2.

E. When there is the same bargaining agent in all bargaining units that will be merged into an alternative organizational structure-wide bargaining unit, the units must be severed and merged upon completion of the transitional period, and the alternative organizational structure shall recognize the bargaining agent as the representative of the merged unit.

F. When all bargaining units that will be severed and merged into an alternative organizational structure-wide bargaining unit are represented by separate local affiliates of the same state labor organization, the units must be severed and merged upon completion of the transitional period. The identity of a single affiliate that will be designated the bargaining agent for the merged unit must be selected by the existing bargaining agents and the state labor organization. Upon completion of the merger and designation of the bargaining agent and notification by the state labor organization to the alternative organizational structure, the alternative organizational structure shall recognize the designated bargaining agent as the representative of employees in the merged unit. If necessary, the parties shall then execute a written amendment to any collective bargaining agreement then in effect to change the name of the bargaining agent to reflect the merger.

G. When there are bargaining units that will be severed and merged into an alternative organizational structure-wide bargaining unit in which there are employees who are not represented by any bargaining agent and other employees who are represented either by the same bargaining agent or separate local affiliates of the same state labor organization, the units must be severed and merged upon completion of the transitional period as long as a majority of employees who compose the merged unit were represented by the bargaining agent prior to the merger. The procedures for severance and merger of separate local affiliates of the same state labor organization described in paragraph F must be followed if applicable. If prior to the merger a bargaining agent did not represent a majority of employees who compose the merged unit, a bargaining agent election must be conducted by the Maine Labor Relations Board pursuant to paragraph H.

H. When bargaining units with different bargaining agents must be merged into a single alternative organizational structure-wide bargaining unit pursuant to this section, the bargaining agent of the merged bargaining unit must be selected in accordance with the Maine Revised Statutes, Title 26, section 967 except as modified in this section.

(1) A petition for an election to determine the bargaining agent must be filed with the Maine Labor Relations Board by any of the current bargaining agents or the alternative organizational structure.

(2) The petition must be filed not more than 90 days prior to the expiration date of the agreement having the latest expiration date among the bargaining units that will be merged into the regional school unit-wide bargaining unit, which may not be later than August 31, 2012.

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

(4) The obligation to bargain with existing bargaining agents continues from the operational date of the alternative organizational structure until the determination of the bargaining agent of the alternative organizational structure-wide bargaining unit under this section.

I. Pursuant to a schedule to be determined by the bargaining agent, but by no later than August 31, 2012, a bargaining agent that has been designated as the future representative of an alternative organizational structure-wide bargaining unit pursuant to this subsection must be recognized by the alternative organizational structure for the purpose of bargaining for an initial collective bargaining agreement for the alternative organizational structure-wide bargaining unit. In the collective bargaining agreement for each alternative organizational structure-wide bargaining unit, the employment relations, policies, practices, salary schedules, hours and working conditions throughout the alternative organizational structure must be made uniform and consistent as soon as practicable. The collective bargaining agreement for each alternative organizational structure-wide bargaining unit is effective as of September 1, 2012, unless the bargaining agent and the alternative organizational structure mutually agree otherwise. In the event that the alternative organizational structure and the bargaining agent for the merged alternative organizational structure-wide bargaining units are unable to agree upon an initial alternative organizational structure-wide collective bargaining agreement, they must use the dispute resolution procedures pursuant to the Maine Revised Statutes, Title 26, section 965 to resolve their differences.

J. On and after the operational date of the alternative organizational structure, but before the completion of negotiations for a single alternative organizational structure-wide collective bargaining agreement for an alternative organizational structure-wide bargaining unit, the wages, hours and working conditions of an employee of the alternative organizational structure who is in a bargaining unit and who is reassigned to a different position that is in a different bargaining unit but that upon the completion of the merger of bargaining units will be included in the same alternative organizational structure-wide bargaining unit must be determined by the terms of the collective bargaining agreement that applies to the position to which the employee is reassigned, except as provided in this subsection.

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

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

(3) If the application of the existing collective bargaining agreement that applies to the position to which the employee is reassigned provides for coverage under a different health insurance plan, the employee may elect to retain coverage under the health insurance plan in which the employee was enrolled immediately prior to reassignment if the eligibility provisions of the plan permit until the completion of negotiations for a single alternative organizational structure-wide collective bargaining agreement for the alternative organizational structure-wide bargaining unit.

(4) During the transitional period, the bargaining unit assignment or assignments of a position that is held by a teacher or other school employee who is employed to provide consolidated services to the students of more than one member school unit must be determined by mutual agreement of the affected member school units and bargaining agents.

SUMMARY

This bill adds provisions to the school reorganization laws regarding employment and collective bargaining for school units that reorganize as alternative organizational structures and that decide to consolidate employment at the alternative organizational structure level to perform services, programs and functions in addition to administration of those services. These provisions are modeled on similar provisions in the laws that apply to regional school units, which were omitted from the portion of the laws that apply to alternative organizational structures. The bill also adds similar employment and collective bargaining provisions for employees of school unions who are now represented by a bargaining agent, which were also omitted from the school reorganization laws.