

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure that Membership of Public Employees in Unions is Voluntary**

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

**Sec. 1. 20-A MRSA §1464, sub-§2, ¶H,** as amended by PL 2009, c. 580, §6, is further amended to read:

H. When bargaining units with different bargaining agents must be merged into a single regional school unit-wide bargaining unit pursuant to this section, the bargaining agent of the merged bargaining unit must be selected in accordance with 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 regional school unit.

(2) The petition must be filed not more than 90 days prior to the first August 31st occurring after the 3rd anniversary date of the operational date of the regional school unit established pursuant to section 1463, subsection 1.

(3) The election ballot may contain only the names of the bargaining agents of bargaining units that will be merged into the regional school unit-wide bargaining unit and the choice of "no representative," but no other choices. No showing of interest is 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 established pursuant to section 1463, subsection 1 until the determination of the bargaining agent of the regional school unit-wide bargaining unit under this section; but in no event may any collective bargaining agreement that is executed after the operational date extend beyond the first August 31st occurring after the 3rd anniversary date of the operational date of the regional school unit.

(5) The Maine Labor Relations Board shall expedite to the extent practicable all petitions for determination of the bargaining agent in the regional school unit-wide bargaining unit filed pursuant to this section.

(6) The bargaining units must be merged into a regional school unit-wide bargaining unit as of the date of certification of the results of the election by the Maine Labor Relations Board or the expiration of the collective bargaining agreements in the unit, whichever occurs later.

(7) Until the first August 31st occurring after the 3rd anniversary date of the operational date of the regional school unit, existing bargaining agents shall continue to represent the bargaining units that they represented on the day prior to the operational date of the regional school unit. If necessary, each bargaining agent and the regional school unit must negotiate an interim collective bargaining agreement to expire on the first August 31st occurring after the 3rd anniversary date of the operational date of the regional school unit.

(8) When there are 2 or more bargaining units in which there are employees who are represented either by the same bargaining agent or by separate local affiliates of the same state labor organization that will be merged into a regional school unit-wide bargaining unit with one or more other bargaining units pursuant to the election procedures described in this paragraph, the bargaining units that are represented either by the same bargaining agent or by separate local affiliates of the same state labor organization must merge as of the operational date. The procedures for merger of separate local affiliates of the same state labor organization described in paragraph E must be followed if applicable.

**Sec. 2. 20-A MRSA §1464-A, sub-§2, ¶F**, as enacted by PL 2009, c. 580, §8, is amended to read:

F. 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 ~~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 first August 31st occurring after either the 3rd anniversary date of the operational date of the alternative organizational structure or the date on which positions are transferred from member school units to the alternative organizational structure, whichever is later.

(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 or the date on which positions are transferred from member school units to the alternative organizational structure, whichever is later, until the determination of the bargaining agent of the alternative organizational structure-wide bargaining unit under this section; but in no event may any collective bargaining agreement that is executed after the operational date extend beyond the first August 31st occurring after either the 3rd anniversary date of the operational date of the alternative organizational structure or the date on which positions are transferred from member school units to the alternative organizational structure, whichever is later.

(5) The Maine Labor Relations Board shall expedite to the extent practicable all petitions for determination of the bargaining agent in the alternative organizational structure filed pursuant to this section.

(6) The bargaining units must be merged into an alternative organizational structure-wide bargaining unit as of the date of certification of the results of the election by the Maine Labor Relations Board or the expiration of the collective bargaining agreements in the unit, whichever occurs later.

(7) Until the first August 31st occurring after either the 3rd anniversary date of the operational date of the alternative organizational structure or the date on which positions are transferred from member school units to the alternative organizational structure, whichever is later, existing bargaining agents shall continue to represent the bargaining units that they represented on the day prior to the operational date of the alternative organizational structure. If necessary, each bargaining agent and the alternative organizational structure must negotiate interim collective bargaining agreements to expire the first August 31st occurring after either the 3rd anniversary date of the operational date of the alternative organizational structure or the date on which positions are transferred from member school units to the alternative organizational structure, whichever is later.

(8) When there are 2 or more bargaining units in which there are employees who are represented either by the same bargaining agent or by separate local affiliates of the same state labor organization that will be merged into an alternative organizational structure-wide bargaining unit with one or more other bargaining units pursuant to the election procedures described in this paragraph, the bargaining units that are represented either by the same bargaining agent or by separate local affiliates of the same state labor organization must merge as of the operational date. The procedures for merger of separate local affiliates of the same state labor organization described in paragraph D must be followed if applicable.

**Sec. 3. 26 MRSA §962, sub-§2**, as amended by PL 1973, c. 458, §1, is further amended to read:

**2. Bargaining agent.** "Bargaining agent" means any lawful organization, association or individual representative of such an organization or association ~~which~~that has as its primary purpose the representation of employees in their employment relations with employers, ~~and which has been determined by the public employer or by the executive director of the board to be the choice of the majority of the unit as their representative.~~

**Sec. 4. 26 MRSA §966, sub-§3,** as enacted by PL 1975, c. 697, §2, is amended to read:

**3. Unit clarification.** ~~Where there is a certified or currently recognized bargaining representative and where~~When 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~~if the parties are unable to agree on appropriate modifications ~~and there is no question concerning representation.~~

**Sec. 5. 26 MRSA §966, sub-§4,** as amended by PL 1993, c. 38, §1, is further amended to read:

**4. Unit merger; same bargaining agent.** ~~If there is the same certified or currently recognized bargaining representative of public employees in~~are multiple bargaining units with the same public employer, the public employer ~~or certified or recognized bargaining representative~~ may file a petition with the executive director to merge those bargaining units. Upon the finding of the executive director or the director's designee that the expanded unit would conform with the requirements set forth in this subsection, the executive director shall order an election within each bargaining unit to determine whether a majority of the employees voting in each bargaining unit wish to be within the expanded unit. The only question on the ballot in a merger election is approval or disapproval of the proposed merger. ~~The executive director or the director's designee shall certify the bargaining agent for an expanded unit consisting of any bargaining units in which a majority of the employees voting approved the merger.~~

A. ~~After an expanded unit is certified, the~~The parties shall then bargain over modifications needed in order to provide for the wages, hours and working conditions or contract grievance arbitration for the newly included positions in any existing collective bargaining agreement or any collective bargaining agreement being negotiated.

When there is an unexpired collective bargaining agreement in the merged bargaining unit with a different expiration date from any other collective bargaining agreement in the merged bargaining unit, all contracts must be honored to their expiration dates unless mutually agreed to otherwise by the public employer and the bargaining agent. Collective bargaining agreements may be bargained on an interim basis in any merged bargaining unit so that all collective bargaining agreements expire on the same date.

B. ~~If a petition has been filed by a competing organization for decertification of the current bargaining agent for any of the bargaining units subject to the merger, then the decertification petition takes precedence over a petition to merge bargaining units.~~

C. A public employer ~~or certified or recognized bargaining representative~~ may not file more than once a year with the executive director to merge or combine bargaining units for the same bargaining unit.

D. The executive director or the director's designee conducting unit merger proceedings may administer oaths and may require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relating to the issues presented to the executive director or the director's designee.

E. A bargaining unit composed of a majority of supervisors may not merge under this subsection with any other bargaining unit.

F. A bargaining unit composed of teachers may not merge under this subsection with a bargaining unit of nonprofessional employees.

**Sec. 6. 26 MRSA §967**, as amended by PL 1991, c. 622, Pt. O, §7, is repealed.

**Sec. 7. 26 MRSA §968, sub-§4**, as amended by PL 1993, c. 90, §1, is further amended to read:

**4. Review of representative proceedings.** Any party aggrieved by any ruling or determination of the executive director, or the executive director's designee, under ~~sections~~section 966 and ~~967~~ 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 hearing to be given to the aggrieved party, the labor ~~organization~~organization or bargaining agent and the public employer. These hearings must be conducted in the manner provided in subsection 5, paragraph B. Within a reasonable time after the conclusion of any hearing the board shall make a written decision that must include findings of fact and either affirm or modify the ruling or determination of the executive director and specify the reasons for that action. A copy of that decision must be mailed to the labor organization or bargaining agent or its attorney or other designated representative and the public employer. 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, ~~provided 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.

**Sec. 8. 26 MRSA §979-A, sub-§1**, as enacted by PL 1973, c. 774, is amended to read:

**1. Bargaining agent.** "Bargaining agent" means any lawful organization, association or individual representative of such an organization or association ~~which~~that has as its primary purpose the representation of employees in their employment relations with employers, ~~and which has been determined by the public employer as defined in subsection 5 or by the executive director of the board to be the choice of the majority of the unit as their representative.~~

**Sec. 9. 26 MRSA §979-E, sub-§3**, as enacted by PL 1975, c. 697, §9, is amended to read:

**3. Unit clarification.** ~~Where there is a certified or currently recognized bargaining representative and where~~ When 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~~ if the parties are unable to agree on appropriate modifications ~~and there is no question concerning representation.~~

**Sec. 10. 26 MRSA §979-F**, as amended by PL 1981, c. 277, is repealed.

**Sec. 11. 26 MRSA §979-G, sub-§2**, as amended by PL 1993, c. 90, §4, is further amended to read:

**2. Review of representation proceedings.** Any person aggrieved by any ruling or determination of the executive director under ~~sections~~ section 979-E and 979-F 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 such hearing to be given to the aggrieved party, the labor ~~organizations~~ organization 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.

**Sec. 12. 26 MRSA §1022, sub-§1-B**, as enacted by PL 1975, c. 671, §3, is amended to read:

**1-B. Bargaining agent.** "Bargaining agent" means any lawful organization, association or individual representative of such an organization or association, ~~which that~~ 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.~~

**Sec. 13. 26 MRSA §1024-A, sub-§7**, as enacted by PL 1979, c. 541, Pt. B, §31, is amended to read:

**7. Unit clarification.** ~~Where there is a certified or currently recognized bargaining representative and where~~ When 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~~ if the parties are unable to agree on appropriate modifications ~~and there is no question concerning representation.~~

**Sec. 14. 26 MRSA §1025**, as amended by PL 2003, c. 20, Pt. OO, §2 and affected by §4, is repealed.

**Sec. 15. 26 MRSA §1027, sub-§3**, as enacted by PL 1975, c. 603, §1, is repealed.

**Sec. 16. 26 MRSA §1028, sub-§2**, as amended by PL 2007, c. 695, Pt. C, §17, is further amended to read:

**2. Review of representation proceedings.** Any person aggrieved by any ruling or determination of the executive director under ~~sections~~section 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~~organization 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.

**Sec. 17. 26 MRSA c. 12-A** is enacted to read:

## **CHAPTER 12-A**

### **REPRESENTATION OF PUBLIC SECTOR LABOR CONTRACTS**

#### **§ 1039. Policy of State**

It is the public policy of this State that any contract or agreement entered into between the State or any subdivision of the State, including, but not limited to, any county, city, town, municipality or independent district, and a labor organization, under the terms of which contract or agreement the labor organization is empowered, or purports to be empowered, to represent any public employee who is not a voluntary member of that labor organization is unlawful and is declared void.

#### **§ 1040. Annual determination of bargaining agent**

Notwithstanding any law to the contrary, a public employee bargaining unit formed pursuant to this Title annually shall hold an election to determine or certify the bargaining agent for that unit.

**Sec. 18. Application.** This Act does not affect the validity of any lawful contract or agreement in existence on the effective date of this Act but does apply to any extension or renewal of such a contract or agreement.

## **SUMMARY**

This bill amends the State's labor laws to ensure that each public sector union represents only those public employees who voluntarily are members of that union.

This bill also requires a public employee union annually to determine or certify the bargaining agent for that union.