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## **An Act To Protect the Rights of Public Employees To Determine Their Collective Bargaining Agent**

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

**Sec. 1. 26 MRSA §967**, as amended by PL 1991, c. 622, Pt. O, §7, is further amended to read:

### **§ 967. Determination of bargaining agent**

**1. Voluntary recognition.** Any public employee organization may file a request with a public employer alleging that a majority of the public employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. Such a request ~~shall~~must describe the grouping of jobs or positions ~~which that~~ constitute the unit claimed to be appropriate and ~~shall~~must include a demonstration of majority support. Such a request for recognition ~~shall~~must be granted by the public employer, unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

**2. Elections.** The executive director of the board, or a designee, upon the signed request of a public employer alleging that one or more public employees or public employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of public employees, ~~or~~ upon the signed petition of at least 30% of a bargaining unit of public employees that they desire to be represented by an organization or pursuant to a bargaining agent recertification required by subsection 3, shall conduct a secret ballot election to determine whether the organization represents a majority of the members in 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 nor~~ the management representatives involved in the election have access to information that would identify a voter. Employees must be permitted to cast a ballot for a period of 7 days from the commencement of the election.

The ballot ~~shall~~must contain the name of ~~such the~~ organization and that of any other organization showing written proof of at least 10% representation of the public employees within the unit, together with a choice for any public employee to designate that ~~he the employee~~ does not desire to be represented by any bargaining agent. ~~Where~~If more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the public employees voting, a run-off election ~~shall~~must be held. The run-off ballot ~~shall~~must contain the 2 choices ~~which that~~ received the largest and second-largest number of votes. When an organization receives the majority of votes of those voting, the executive director of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit ~~shall~~must be recognized by the public employer 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 of the board as not representing a majority of the unit.

Whenever 30% of the employees in a certified bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question ~~shall be~~ are the same as for representation as bargaining agent hereinbefore set forth.

**3. Recertification.** The executive director of the board or the director's designee shall periodically direct a secret ballot election to certify that a majority of the employees in a certified bargaining unit desire to be represented by the unit's currently certified bargaining agent. The recertification election must be conducted in accordance with subsection 2, except that a majority vote for purposes of a recertification election is a majority of all employees in the bargaining unit.

If the bargaining agent is not recertified by a majority vote of all employees in the bargaining unit, the executive director or the director's designee shall decertify the bargaining agent and the bargaining unit will not be represented by that bargaining agent. If the bargaining agent is decertified in accordance with this subsection, the terms of any collective bargaining agreement that are in effect between the bargaining unit represented by that bargaining agent and the employer remain in effect except as to dues, service fees, grievances, arbitration and any other provisions regarding the bargaining agent. The employees in a bargaining unit that has failed to recertify its bargaining agent pursuant to this subsection may certify a new bargaining agent pursuant to this section, except that, for a period of at least one year, the employees may not certify a new bargaining agent that is substantially similar to or affiliated with the previous bargaining agent.

The executive director or the director's designee shall commence recertification elections not less than 2 years and not more than 3 years after the effective date of this subsection and shall then subsequently commence recertification elections every even-numbered year. Recertification elections must be conducted no earlier than August 1st and no later than December 1st in any year in which they occur.

No question concerning representation may be raised within one year of a certification or attempted certification. ~~Where~~ When 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. No question concerning representation may be raised during this period except by the executive director or the director's designee in accordance with subsection 3 or by a bargaining agent, employer, employee or group of employees when the bargaining unit has failed to recertify its bargaining agent pursuant to subsection 3. The not more than 90-day nor less than 60-day period prior to the expiration date of an agreement regarding unit determination and representation ~~shall~~ does not apply to matters of unit clarification.

The bargaining agent certified by the executive director of the board as the exclusive bargaining agent ~~shall be~~ is required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, ~~provided~~ except that any public employee at any time may present ~~his~~ the employee's grievance to the public employer and have ~~sue~~ the grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the

terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of ~~such~~the grievance.

**Sec. 2. 26 MRSA §968, sub-§3**, as amended by PL 1975, c. 564, §24, is further amended to read:

**3. Rule-making power.** The board may, after a public hearing, from time to time, adopt such rules of procedure as it ~~deems~~considers necessary for the orderly conduct of its business and for carrying out the purposes of this chapter. These rules must include measures designed to preserve the integrity of recertification elections and the secrecy of the ballot, and must also include a determination of whether recertification elections may be conducted in person, by mail, by telephone, by Internet-based systems or by any other means determined to be fair, confidential and reliable. These rules may also establish a fee schedule applicable to an organization under consideration for bargaining agent in a recertification election for the purpose of funding such elections. Such rules ~~shall~~must be published and made available to all interested parties. The board shall also, upon its own initiative or upon request, issue interpretative rules interpreting the provisions of this chapter. Such interpretative rules ~~shall be~~are advisory only and ~~shall~~are not be binding upon any court. Such interpretative rules must be in writing and available to any person interested therein.

**Sec. 3. 26 MRSA §979-F, sub-§2**, as amended by PL 1981, c. 277, is further amended to read:

## **2. Elections.**

A. The executive director of the board or ~~his~~the director's designee, upon signed request of a public employer alleging that one or more state employees or state employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of state employees, ~~or~~ upon signed petition of at least 30% of a bargaining unit of state employees that they desire to be represented by an organization or pursuant to a bargaining agent recertification required by paragraph F, 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 ~~provided, nevertheless, that the~~. The procedures adopted and employed by the Maine Labor Relations Board ~~shall~~must maintain the anonymity of the voter from both the employee organizations and the management representatives involved. Employees must be permitted to cast a ballot for a period of 7 days from the commencement of the election.

B. The ballot ~~shall~~must contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the state employees within the unit, together with a choice for any state employee to designate that ~~he~~the employee does not desire to be represented by any bargaining agent. ~~Where~~When more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the state employees voting, a run-off election ~~shall~~must be held. The run-off ballot ~~shall~~must contain the 2 choices ~~which~~that received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit ~~shall~~must be recognized by the public employer 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 of the board as not representing a majority of the unit.

C. Whenever 30% of the employees in a certified 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.

D. No question concerning representation may be raised within one year of a certification or attempted certification. ~~Where~~When 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. Unit clarification proceedings are not subject to this time limitation and may be brought at any time consistent with section 979-E, subsection 3. No question concerning representation may be raised during this period except by the executive director or the director's designee in accordance with paragraph F or by a bargaining agent, employer, employee or group of employees when the bargaining unit has failed to recertify its bargaining agent pursuant to paragraph F.

E. The bargaining agent certified by the executive director of the board or ~~his~~the director's designee as the exclusive bargaining agent ~~shall be~~ required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, ~~provided~~except that any public employee at any time may present ~~his~~the employee's grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance.

F. The executive director of the board or the director's designee shall periodically direct a secret ballot election to certify that a majority of the employees in a certified bargaining unit desire to be represented by the unit's currently certified bargaining agent. The recertification election must be conducted in accordance with this subsection, except that a majority vote for purposes of a recertification election is a majority of all employees in the bargaining unit.

If the bargaining agent is not recertified by a majority vote of all employees in the bargaining unit, the executive director or the director's designee shall decertify the bargaining agent, and the bargaining unit will not be represented by that bargaining agent. If the bargaining agent is decertified in accordance with this paragraph, the terms of any collective bargaining agreement that are in effect between the bargaining unit represented by that bargaining agent and the employer remain in effect except as to dues, service fees, grievances, arbitration and any other provisions regarding the bargaining agent. The employees in a bargaining unit that has failed to recertify its bargaining agent pursuant to this paragraph may certify a new bargaining agent pursuant to this section, except that, for a period of at least one year, the employees may not certify a new bargaining agent that is substantially similar to or affiliated with the previous bargaining agent.

The executive director or the director's designee shall commence recertification elections not less than 2 years and not more than 3 years after the effective date of this paragraph and shall then subsequently commence recertification elections every even-numbered year. Recertification elections must be conducted no earlier than August 1st and no later than December 1st in any year in which they occur.

**Sec. 4. 26 MRSA §1287**, as enacted by PL 1983, c. 702, is amended to read:

## **§ 1287. Determination of bargaining agent**

**1. Voluntary recognition.** Any judicial employee organization may file a request with the public employer alleging that a majority of the judicial employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. The request ~~shall~~must describe the grouping of jobs or positions ~~which~~that constitute the unit claimed to be appropriate and ~~shall~~must include a demonstration of majority support. The request for recognition ~~shall~~must be granted by the public employer, unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

**2. Elections.** The executive director of the board or ~~his~~the director's designee, upon signed request of a public employer alleging that one or more judicial employees or judicial employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of judicial employees, ~~or~~ upon signed petition of at least 30% of a bargaining unit of judicial employees that they desire to be represented by an organization or pursuant to a bargaining agent recertification required by subsection 3, paragraph E, 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, ~~provided that the~~. The procedures adopted and employed by the board shall~~must~~ maintain the anonymity of the voter from both the employee organizations and the management representatives involved. Employees must be permitted to cast a ballot for a period of 7 days from the commencement of the election.

### **3. Voting.**

A. The ballot ~~shall~~must contain the name of the organization and that of any other organization showing written proof of at least 10% representation of the judicial employees within the unit, together with a choice for any judicial employee to designate that ~~he~~the employee does not desire to be represented by any bargaining agent. When more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the judicial employees voting, a runoff election ~~shall~~must be held. The runoff ballot ~~shall~~must contain the 2 choices ~~which~~that received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit ~~shall~~must be recognized by the public employer 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~~is held and the bargaining agent declared by the executive director of the board as not representing a majority of the unit.

B. Whenever 30% of the employees in a certified 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 as set forth in this chapter.

C. No question concerning representation may be raised within one year of a certification or attempted certification. ~~Where~~ When 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 days nor less than 60 days prior to the expiration date of the agreement. Unit clarification proceedings are not subject to this time limitation and may be brought at any time consistent with section 1286, subsection 4. No question concerning representation may be raised during this period except by the executive director or the director's designee in accordance with paragraph E or by a bargaining agent, employer, employee or group of employees when the bargaining unit has failed to recertify its bargaining agent pursuant to paragraph E.

D. The bargaining agent certified by the executive director of the board or ~~his~~ the director's designee as the exclusive bargaining agent ~~shall be~~ is required to represent all the judicial employees within the unit without regard to membership in the organization certified as bargaining agent, ~~provided~~ except that any judicial employee at any time may present ~~his~~ the employee's grievance to the public employer and have that grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of that grievance.

E. The executive director of the board or the director's designee shall periodically direct a secret ballot election to certify that a majority of the employees in a certified bargaining unit desire to be represented by the unit's currently certified bargaining agent. The recertification election must be conducted in accordance with subsection 2, except that a majority vote for purposes of a recertification election is a majority of all employees in the bargaining unit.

If the bargaining agent is not recertified by a majority vote of all employees in the bargaining unit, the executive director or the director's designee shall decertify the bargaining agent, and the bargaining unit will not be represented by that bargaining agent. If the bargaining agent is decertified in accordance with this paragraph, the terms of any collective bargaining agreement that are in effect between the bargaining unit represented by that bargaining agent and the employer remain in effect except as to dues, service fees, grievances, arbitration and any other provisions regarding the bargaining agent. The employees in a bargaining unit that has failed to recertify its bargaining agent pursuant to this paragraph may certify a new bargaining agent pursuant to this section, except that, for a period of at least one year, the employees may not certify a new bargaining agent that is substantially similar to or affiliated with the previous bargaining agent.

The executive director or the director's designee shall commence recertification elections not less than 2 years and not more than 3 years after the effective date of this paragraph and shall then subsequently commence recertification elections every even-numbered year. Recertification elections must be conducted no earlier than August 1st and no later than December 1st in any year in which they occur.

## SUMMARY

This bill makes the following changes to the municipal public employees labor relations laws, the state employees labor relations laws and the judicial employees labor relations laws.

1. It adds a new requirement for recertification elections, which must start within 3 years of the effective date of the provision and must be held every even-numbered year after that, to ensure that a majority of the employees in the collective bargaining unit support their current collective bargaining agent. If the bargaining agent does not receive votes from a majority of the employees in the bargaining unit, the bargaining agent is decertified and will no longer represent the bargaining unit.

2. It permits employees who have decertified a bargaining agent pursuant to the new recertification election process to certify a new bargaining agent at any time, regardless of whether a collective bargaining agreement is still in effect.

3. It permits an employee to cast a ballot for a period of 7 days from the commencement of a collective bargaining election.

4. It adds a requirement that the Maine Labor Relations Board adopt rules to preserve the integrity of collective bargaining recertification elections and the secrecy of the ballot, including a determination of acceptable methods for submitting a ballot. These rules may also establish a fee schedule applicable to an organization under consideration for bargaining agent in a recertification election for the purpose of funding such elections.