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An Act To Amend the Laws Governing Arbitration under Certain Public Employees Labor Relations Laws

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

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

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

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

If they do not jointly agree to such an arbitration procedure within 10 days after the end of ~~said~~the 45-day period, then either party may, by written notice to the other, request that their differences be submitted to a board of 3 arbitrators. The bargaining agent and the public employer shall within 5 days of ~~sue~~the request each select and name one arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The 2 arbitrators so selected and named shall, within 10 days from ~~sue~~the request, agree upon and select and name a neutral arbitrator from the panel of arbitrators established in accordance with subsection 4-A. ~~If either party shall not select its arbitrator or if the 2 arbitrators shall fail to agree upon, select and name a neutral arbitrator within said 10 days, either party may request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator. As soon as possible after receipt of such request, the neutral arbitrator will be selected in accordance with rules and procedures prescribed by the American Arbitration Association for making such selection. If the 2 arbitrators cannot in 10 days select a neutral arbitrator, the executive director shall appoint the neutral arbitrator from the panel of arbitrators established in accordance with subsection 4-A.~~ The neutral arbitrator so selected ~~will~~may not, without the consent of both parties, be the same person who was selected as mediator pursuant to subsection 2 nor any member of the fact-finding board selected pursuant to subsection 3. As soon as possible after the selection of the neutral arbitrator, the 3 arbitrators ~~or if either party shall not have selected its arbitrator, the 2 arbitrators, as the case may be,~~ shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, make inquiries and investigations, hold hearings, or take such other steps as they deem ~~determine~~determine appropriate. ~~If the neutral arbitrator is selected by utilizing the procedures of the American Arbitration Association, the arbitration proceedings will be conducted in accordance with the rules and procedures of the American Arbitration Association. The hearing shall~~must be informal, and the rules of evidence prevailing in judicial proceedings ~~shall~~are not be binding. Any and all documentary evidence and other data ~~deemed~~determined relevant by the arbitrators may be received in evidence.

The arbitrators shall have the power to administer oaths and to 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 for determination.

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 30 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 all subjects other than salaries, pensions and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within 30 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~~ shall 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 972. Notwithstanding section 964, subsection 2, if the public employer fails to enter into an agreement or take whatever other action may be appropriate to carry out and effectuate binding determinations made by arbitrators pursuant to this subsection, the public employees represented by the bargaining agent, except for public employees whose duties include protecting public safety, may engage in a strike. The results of all arbitration proceedings, recommendations and awards conducted under this section shall ~~must~~ 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~~ chair of the arbitration panel ~~will~~ shall submit a report of ~~his~~ the arbitrator's or chair's activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

In reaching a decision under this subsection, the arbitrator shall consider the following:

- A. The interests and welfare of the public and the financial ability of the public employer to finance the cost items proposed by each party to the impasse;
- B. A 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 in other jurisdictions competing in the same labor market;
- C. The overall compensation presently received by the employees including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received;

D. Factors other than those specified in paragraphs A to C that are normally and traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in public or private employment, including the average Consumer Price Index;

E. The need of the public employer for qualified employees;

F. Conditions of employment in similar occupations outside public employment;

G. The need to maintain appropriate relationships between different occupations in public employment; and

H. The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities.

Cost items in a collective bargaining agreement that is arrived at through arbitration in accordance with this subsection may not be submitted for inclusion in the municipality's operating budget for the fiscal year in which the agreement is ratified, but must be submitted for inclusion in the municipality's operating budget for the fiscal year following the fiscal year in which the agreement is ratified.

Sec. 2. 26 MRSA §965, sub-§4-A is enacted to read:

4-A. Panel of arbitrators. The Governor shall appoint a panel of arbitrators, consisting of no fewer than 5 nor more than 10 impartial arbitrators, to serve as impartial arbitrators of the interests of the public in the settlement of disputes between employers and employees or their representatives. The board shall supply to the Governor nominations for appointment to the panel. The arbitrators must reside in the State and be neutral and unbiased. The board shall adopt rules governing the necessary qualifications for appointment to the panel and allowable compensation for panel members.

Sec. 3. 26 MRSA §979-D, sub-§4, ¶B, as enacted by PL 1973, c. 774, is amended to read:

B. If the parties have not resolved their controversy by the end of saidthe 45-day period, either party may petition the board to initiate compulsory final and binding arbitration of the negotiations impasse. On receipt of the petition, the executive director of the board shall investigate to determine if an impasse has been reached. If he-sothe executive director determines that an impasse has been reached, hethethe 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, theThe board shall then order each party to select one arbitrator, and if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the board shall submit a list from which the parties may alternately strike names until a single name is left, who shall be appointed by the board as arbitratorthe 2 arbitrators so named shall select a 3rd neutral arbitrator from the panel of arbitrators established in accordance with section 965, subsection 4-A. If the 2 arbitrators cannot in 10 days select a neutral arbitrator, the executive director shall appoint the neutral arbitrator from the panel of arbitrators established in accordance with section 965, subsection 4-A.

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

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

Sec. 5. 26 MRSA §979-D, sub-§4, ¶F is enacted to read:

F. Notwithstanding section 979-C, subsection 2, if the public employer fails to enter into an agreement or take whatever other action may be appropriate to carry out and effectuate binding determinations made by arbitrators pursuant to this subsection, the state or legislative employees represented by the bargaining agent, except for employees whose duties include protecting public safety, may engage in a strike.

Sec. 6. 26 MRSA §979-D, sub-§4, ¶G is enacted to read:

G. Cost items in a collective bargaining agreement arrived at through arbitration in accordance with this subsection:

(1) May not be submitted for inclusion in the Governor's operating budget for the fiscal year in which the agreement is ratified; and

(2) Must be submitted for inclusion in the Governor's operating budget for the fiscal year following the fiscal year in which the agreement is ratified.

Sec. 7. 26 MRSA §1026, sub-§4, ¶A, as corrected by RR 2009, c. 2, §76, is amended to read:

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 to select a 3rd neutral arbitrator from the panel of arbitrators established in accordance with section 965, subsection 4-A.~~ 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 ~~appoint the 3rd neutral arbitrator from the panel of arbitrators established in accordance with section 965, subsection 4-A.~~ 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.~~

Sec. 8. 26 MRSA §1026, sub-§4, ¶B, as amended by PL 1983, c. 153, §2, is further amended to read:

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~~with respect to a controversy over all 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~~shall 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~~must 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~~chair of the arbitration panel ~~will~~shall submit a report of ~~his~~the arbitrator's or chair's activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

Sec. 9. 26 MRSA §1026, sub-§4, ¶D is enacted to read:

D. Notwithstanding section 1027, subsection 2, if the university, academy or community college fails to enter into an agreement or take whatever other action may be appropriate to carry out and effectuate binding determinations made by arbitrators pursuant to this subsection, the university, academy or community college employees represented by the bargaining agent, except for employees whose duties include protecting public safety, may engage in a strike.

Sec. 10. 26 MRSA §1026, sub-§4, ¶E is enacted to read:

E. Cost items in a collective bargaining agreement arrived at through arbitration in accordance with this subsection:

(1) May not be submitted for inclusion in the Governor's operating budget for the fiscal year in which the agreement is ratified; and

(2) Must be submitted for inclusion in the Governor's operating budget for the fiscal year following the fiscal year in which the agreement is ratified.

Sec. 11. 26 MRSA §1285, sub-§4, as enacted by PL 1983, c. 702, is amended to read:

4. Arbitration.

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

B. If the parties have not resolved their controversy by the end of that 45-day period, either party may petition the board to initiate compulsory final and binding arbitration of the negotiations' impasse. On receipt of the petition, the executive director of the board shall investigate to determine if an impasse has been reached. ~~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 an arbitration panel, the board shall then order each party to select one arbitrator and, if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the board shall submit a list from which the parties may alternately strike names until a single name is left, who shall be appointed by the board as arbitrator~~the 2 arbitrators so selected to select a 3rd neutral arbitrator from the panel of arbitrators established in accordance with section 965, subsection 4-A. If the 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the executive director shall appoint the 3rd neutral arbitrator from the panel of arbitrators established in accordance with section 965, subsection 4-A. In reaching a decision under this paragraph, the arbitrator shall consider the following factors:

(1) The interests and welfare of the public and the financial ability of State Government 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 the executive and legislative branches of government and in public and private employment in other jurisdictions competing in the same labor market;

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

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

(5) The need of the Judicial Department for qualified employees;

(6) Conditions of employment in similar occupations outside State Government;

(7) The need to maintain appropriate relationships between different occupations in the Judicial Department; and

(8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities.

C. Cost items in a collective bargaining agreement arrived at through arbitration in accordance with this subsection:

(1) May not be submitted for inclusion in the Judicial Department's operating budget for the fiscal year in which the agreement is ratified; and

(2) Must be submitted for inclusion in the Judicial Department's operating budget for the fiscal year following the fiscal year in which the agreement is ratified.

With respect to controversies over salaries, pensions and insurance, the arbitrator shall recommend terms of settlement and may make findings of fact. The recommendations and findings shall be advisory and shall not be binding upon the parties. The determination by the arbitrator on all other issues shall be final and binding on the parties. Notwithstanding section 1284, subsection 2, if the public employer fails

to enter into an agreement or take whatever other action may be appropriate to carry out and effectuate binding determinations made by arbitrators pursuant to this subsection, the judicial employees represented by the bargaining agent, except for employees whose duties include protecting public safety, may engage in a strike.

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

Sec. 12. 26 MRSA §1285, sub-§5, ¶E, as enacted by PL 1983, c. 702, is amended to read:

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

Sec. 13. Effective date. This Act takes effect July 1, 2021.

SUMMARY

Under current law, arbitrations under labor relations laws governing municipal public employees, University of Maine System employees, state employees and judicial employees require that each party select one arbitrator and those 2 arbitrators select a neutral 3rd arbitrator. This bill requires that the neutral 3rd arbitrator be selected from a panel of arbitrators appointed by the Governor from a list of nominations supplied by the Maine Labor Relations Board. Under the bill, appointees to the panel of arbitrators serve as impartial arbitrators of the interests of the public in the settlement of disputes between employers and employees or their representatives, and each appointee must reside in the State. In addition, this bill:

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

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

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

4. Adds specific factors an arbitrator must consider when a controversy is not resolved between a public employer and bargaining agent under the municipal public employees labor relations law;
5. Provides that, if a public employer fails to enter into an agreement to carry out and effectuate binding determinations made by arbitrators, the public employees are authorized to strike;
6. Requires that cost items in a collective bargaining agreement arrived at through arbitration may not be included in the state or local operating budget, as relevant, for the current fiscal year, but must instead be submitted for inclusion in the operating budget for the following fiscal year; and
7. Provides an effective date for the changes made in the bill of July 1, 2021.