

Title 26: LABOR AND INDUSTRY
Chapter 9-B: STATE EMPLOYEES LABOR RELATIONS ACT

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Maine Revised Statutes
Title 26: LABOR AND INDUSTRY
Chapter 9-B: STATE EMPLOYEES LABOR RELATIONS ACT

§979. 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 the State and its employees and between the Legislature and its employees by providing a uniform basis for recognizing the right of state or legislative 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. [1997, c. 741, §1 (AMD); 1997, c. 741, §12 (AFF).]

SECTION HISTORY

1973, c. 774, (NEW). 1997, c. 741, §1 (AMD). 1997, c. 741, §12 (AFF).

§979-A. DEFINITIONS

As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings. [1973, c. 774, (NEW).]

1. Bargaining agent. "Bargaining agent" means any lawful organization, association or individual representative of such organization or association which 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.

[1973, c. 774, (NEW) .]

2. Board. "Board" means the Maine Labor Relations Board as defined in section 968, subsection 1.

[1975, c. 564, §30 (AMD) .]

3. Cost items. "Cost items" means the provisions of a collective bargaining agreement which requires an appropriation by the Legislature.

[1973, c. 774, (NEW) .]

4. Executive director. "Executive director" means the Executive Director of the Maine Labor Relations Board as defined in section 968, subsection 2.

[1975, c. 564, §31 (AMD) .]

4-A. Legislative employee. "Legislative employee" means any employee of the Legislature performing services within the legislative branch, except any person:

A. Who is elected by popular vote; [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

B. Who is appointed to office pursuant to law by the Governor or the Legislature for a specific term; [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

C. Who is employed in the office of the President of the Senate, the office of the Speaker of the House, the office of the Secretary of the Senate, the office of the Clerk of the House of Representatives or the majority or minority offices of the Senate or the House of Representatives; [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

D. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship with respect to matters subject to collective bargaining, as between that person and the Legislative Council; [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

E. Who is a temporary, on-call employee; or [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

F. Who has been employed less than 30 days. [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

[1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF) .]

5. Public employer. "Public employer" means, with respect to the executive branch, all the departments, agencies and commissions of the executive branch of the State of Maine, represented by the Governor or the Governor's designee. In the furtherance of this chapter, the State is considered a single employer and employment relations, policies and practices throughout the state service must be as consistent as practicable. With respect to state employees, it is the responsibility of the executive branch to negotiate collective bargaining agreements and to administer such agreements. To coordinate the employer position in the negotiation of agreements, the Legislative Council or its designee shall maintain close liaison with the Governor or the Governor's designee representing the executive branch relative to the negotiation of cost items in any proposed agreement. The Governor is responsible for the employer functions of the executive branch under this chapter, and shall coordinate its collective bargaining activities with operating agencies on matters of agency concern. It is the responsibility of the legislative branch to act upon those portions of tentative agreements negotiated by the executive branch that require legislative action.

"Public employer" means, with respect to the legislative branch, all offices or agencies of the Legislature represented by the Legislative Council or its designee. With respect to legislative employees, the Legislative Council shall negotiate and administer collective bargaining agreements. The Legislative Council or its designee is responsible for the employer functions of the legislative branch under this chapter.

With respect to the executive branch, the Bureau of Human Resources, through the Commissioner of Administrative and Financial Services, shall act as directed by the Governor to:

A. Develop and execute employee relations' policies, objectives and strategies consistent with the overall objectives of the Governor; [1981, c. 289, §11 (NEW).]

B. Conduct negotiations with certified and recognized bargaining agents under applicable statutes; [1981, c. 289, §11 (NEW).]

C. Administer and interpret collective bargaining agreements, and coordinate and direct agency activities as necessary to promote consistent policies and practices; [1981, c. 289, §11 (NEW).]

D. Represent the State in all bargaining unit determinations, elections, prohibited practice complaints and any other proceedings growing out of employee relations and collective bargaining activities; [1981, c. 289, §11 (NEW).]

E. Coordinate the compilation of all data and information needed for the development and evaluation of employee relations' programs and in the conduct of negotiations; [1981, c. 289, §11 (NEW).]

F. Coordinate the State's resources as needed to represent the State in negotiations, mediation, fact-finding, arbitration and other proceedings; and [1997, c. 741, §3 (AMD); 1997, c. 741, §12 (AFF).]

G. Provide staff advice on employee relations to the various departments and agencies of State Government, including providing for necessary supervisory and managerial training. [1981, c. 289, §11 (NEW).]

All state departments and agencies shall provide such assistance, services and information as required by the Governor's office, or the Bureau of Human Resources, and shall take such administrative or other action as may be necessary to implement and administer the provisions of any binding agreement between the State and employee organizations entered into under law.

[2007, c. 240, Pt. HH, §14 (AMD) .]

6. State employee. "State employee" means any employee of the State of Maine performing services within the executive department except any person:

- A. Elected by popular vote; or [1973, c. 774, (NEW) .]
- B. Appointed to office pursuant to statute, ordinance or resolution for a specified term by the Governor or by a department head or body having appointive power within the executive department; or [1973, c. 774, (NEW) .]
- C. Whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the Governor, a department head, body having appointive power within the executive department or any other official or employee excepted by this section; or [1981, c. 381, §1 (AMD) .]
- D. Who is a department or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the Governor or by a body having appointive power within the executive department; or [1973, c. 774, (NEW) .]
- E. Who has been employed less than 6 months; or [1973, c. 774, (NEW) .]
- F. Who is a temporary, seasonal or on-call employee; or [1973, c. 774, (NEW) .]
- G. Who is serving as a member of the State Militia or National Guard; or [1981, c. 381, §1 (AMD) .]
- H. Who is a staff attorney, assistant attorney general or deputy attorney general in the Department of Attorney General; or [1981, c. 381, §2 (AMD) .]
- I. Who is appointed to a major policy-influencing position as designated by Title 5, chapter 71; or [1985, c. 785, Pt. A, §99 (AMD) .]
- J. Who substantially participates in the formulation and effectuation of policy in a department or agency or has a major role, other than a typically supervisory role, in the administration of a collective bargaining agreement in a department or agency; or [1997, c. 773, §2 (AMD); 1997, c. 773, §§7, 8 (AFF) .]
- K. Who is a prisoner employed by a public employer during the prisoner's term of imprisonment, except for prisoners who are in a work release program or supervised community confinement pursuant to Title 34-A, section 3036-A. [2013, c. 133, §22 (AMD) .]
- L. [1997, c. 773, §§7, 8 (AFF); 1997, c. 773, §4 (RP) .]

[2013, c. 133, §22 (AMD) .]

SECTION HISTORY

1973, c. 774, (NEW). 1975, c. 564, §§30,31 (AMD). 1977, c. 642, (AMD). 1981, c. 289, §11 (AMD). 1981, c. 381, §§1-3 (AMD). 1985, c. 785, §§A98,99 (AMD). 1989, c. 654, §§3,4,13 (AMD). 1991, c. 780, §Y121 (AMD). 1997, c. 668, §§4-6 (AMD). 1997, c. 741, §§2,3 (AMD). 1997, c. 741, §12 (AFF). 1997, c. 773, §§2-4 (AMD). 1997, c. 773, §§7,8 (AFF). 2007, c. 240, Pt. HH, §14 (AMD). 2009, c. 142, §12 (AMD). 2013, c. 133, §22 (AMD).

§979-B. RIGHT OF STATE EMPLOYEES OR LEGISLATIVE 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 state or legislative employee or a group of employees in the free exercise of their rights, given by this section, to voluntarily: [2007, c. 415, §6 (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

[2007, c. 415, §6 (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.

[2007, c. 415, §6 (NEW).]

SECTION HISTORY

1973, c. 774, (NEW). 1997, c. 741, §4 (AMD). 1997, c. 741, §12 (AFF). 2007, c. 415, §6 (RPR).

§979-C. PROHIBITED ACTS OF THE PUBLIC EMPLOYER, STATE EMPLOYEES AND STATE EMPLOYEE ORGANIZATIONS

1. Public employer prohibitions. The public employer, its representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 979-B; [1973, c. 774, (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; [1973, c. 774, (NEW).]

C. Dominating or interfering with the formation, existence or administration of any employee organization; [1973, c. 774, (NEW).]

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; [1973, c. 774, (NEW).]

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 979-D; [1973, c. 774, (NEW).]

F. Blacklisting of any employee organization or its members for the purpose of denying them employment; [2007, c. 415, §7 (AMD).]

G. Requiring an employee to join a union, employee association or bargaining agent as a member; and [2007, c. 415, §8 (NEW).]

H. Terminating or disciplining an employee for not paying union dues or fees of any type. [2007, c. 415, §9 (NEW).]

[2007, c. 415, §§7-9 (AMD).]

2. State and legislative employee prohibitions. State and legislative employees, 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 979-B or the public employer in the selection of its representative for purposes of collective bargaining or the adjustment of grievances; [1973, c. 774, (NEW).]

B. Refusing to bargain collectively with the public employer as required by section 979-D; [1973, c. 774, (NEW).]

C. Engaging in:

(1) A work stoppage;

(2) A slowdown;

(3) A strike; or

(4) The blacklisting of the public employer for the purpose of preventing it from filling employee vacancies. [1973, c. 774, (NEW).]

[1997, c. 741, §5 (AMD); 1997, c. 741, §12 (AFF) .]

3. Violations. Violations of this section shall be processed by the board in the manner provided in section 979-H.

[1973, c. 774, (NEW) .]

SECTION HISTORY

1973, c. 774, (NEW). 1997, c. 741, §5 (AMD). 1997, c. 741, §12 (AFF). 2007, c. 415, §§7-9 (AMD).

§979-D. OBLIGATION TO BARGAIN

1. Negotiations. On and after January 1, 1975, it shall be the obligation of the public employer 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; [1973, c. 774, (NEW).]

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided the parties have not otherwise agreed in a prior written contract; [1973, c. 774, (NEW).]

C. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed 3 years; [1987, c. 33, (AMD).]

D. To participate in good faith in the mediation, fact finding and arbitration procedures required by this section; and [1985, c. 289, (AMD).]

E. To confer and negotiate in good faith:

(1) 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 shall be compelled to agree to a proposal or be required to make a concession. All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining, except those matters which are prescribed or controlled by public law. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by public law include but are not limited to:

(a) Wage and salary schedules to the extent they are inconsistent with rates prevailing in commerce and industry for comparable work within the State;

- (b) Work schedules relating to assigned hours and days of the week;
- (c) Use of vacation or sick leave, or both;
- (d) General working conditions;
- (e) Overtime practices;
- (f) Rules for personnel administration, except the following: Rules relating to applicants for employment in state or legislative service and state classified employees in an initial probationary status, including any extensions thereof, provided such rules are not discriminatory by reason of an applicant's race, color, creed, sex or national origin;
- (g) Compensation system for state and legislative employees, which is defined as:
 - (i) Guide charts, if any, and job evaluation factors, including factor language and factor weights, used to evaluate jobs for pay purposes;
 - (ii) Job point to pay grade conversion tables;
 - (iii) The number of and spread between pay steps within pay grades;
 - (iv) The number of and spread between pay grades within the system; and
 - (v) Temporary payment of recruitment and retention stipends, provided the stipends are allowed under Civil Service Law;
- (h) The nature of and procedures governing appeals of the allocation or reallocation of job classifications to pay grades resulting from any revisions to the compensation system; and
- (i) Implementation of any revisions to the compensation system.

(2) Subparagraph (1), shall not be construed to be in derogation of or contravene the spirit and intent of the merit system principles and personnel laws.

(3) Cost items shall 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 shall be returned to the parties for further bargaining. Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subparagraph shall not be submitted in the same legislation that contains cost items for employees exempted from the definition of "state employee" under section 979-A, subsection 6, and employees of the legislative branch, except that cost items for those employees exempted under section 979-A, subsection 6, paragraphs E and F, need not be excluded.

(4) Collective bargaining over the subjects described in subparagraph (1), divisions (g), (h) and (i), is subject to the following.

- (a) Subparagraph (1), division (g), shall not be construed to authorize any more than one system for evaluating jobs of state employees in bargaining units recognized under this chapter.
- (b) Either the public employer or the bargaining agents may compel the other party to bargain collectively over the subjects described in subparagraph (1), divisions (g), (h) and (i), provided that bargaining over those subjects may not be compelled by either the public employer or the bargaining agents sooner than 10 years after the parties' last agreement to revise the compensation system made pursuant to a demand to bargain.
- (c) During the periods of time described in division (b), when the subjects described in subparagraph (1), divisions (g), (h) and (i), are not mandatory subjects of bargaining, they shall be permissive subjects of bargaining.

(d) Bargaining over the subjects described in subparagraph (1), divisions (g), (h) and (i), shall be conducted separately and apart from bargaining with individual bargaining agents over all other negotiable subjects and shall be conducted within a committee composed of representatives of management and of the bargaining units recognized under this chapter.

(e) The labor representatives on the committee shall consist of equal numbers of representatives from each of the bargaining units recognized under this chapter. Each bargaining unit shall have one vote, regardless of the number of representatives, on any matter addressed by the committee. The labor position on any matter addressed by the committee shall be established by majority vote of the units recognized under this chapter. A majority vote of the units is necessary to initiate bargaining over the matters described in subparagraph (1), divisions (g), (h) and (i).

(f) Notwithstanding the time frame provided in subparagraph (3), cost items resulting from revisions to the compensation system may only be submitted to the Legislature for funding after all appeals from the allocation or reallocation of job classifications under the revised system have been finally decided. The cost items relating to an individual bargaining unit shall be submitted to the Legislature for funding as part of the next legislation submitted pursuant to subparagraph (3) to fund a collective bargaining agreement between the State and that bargaining unit.

(g) Bargaining over the subjects described in subparagraph (1), divisions (g), (h) and (i), shall be subject to the dispute resolution procedures of subsections 2, 3 and 4. For purposes of subsection 4, paragraph D, controversies over the subjects described in subparagraph (1), divisions (g), (h) and (i), shall be deemed "controversies over salaries."

(5) Nothing in this chapter may be construed to exclude from the scope of collective bargaining the subjects described in subparagraph (1), divisions (g), (h) and (i). [1997, c. 741, §6 (AMD); 1997, c. 741, §12 (AFF).]

[1997, c. 741, §6 (AMD); 1997, c. 741, §12 (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 and other disputes subject to settlement through mediation. [1975, c. 564, §32 (AMD).]

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. [1975, c. 564, §32 (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. [1975, c. 564, §32 (AMD).]

D. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged. [1973, c. 774, (NEW).]

[1975, c. 564, §32 (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 for fact-finding services with recommendations 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. [1975, c. 564, §33 (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. [1975, c. 564, §34 (AMD).]

C. The fact-finding proceedings shall be as provided by section 965, subsection 3. [1973, c. 774, (NEW).]

[1975, c. 564, §§33, 34 (AMD) .]

4. Arbitration.

A. In addition to the 30-day period referred to in section 965, 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. [1973, c. 774, (NEW).]

B. If the parties have not resolved their controversy by the end of said 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 so determines, he 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 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. [1973, c. 774, (NEW).]

C. 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 the 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 public and private employment in other jurisdictions competing in the same labor market;
- (3) The over-all 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 State Government and the Legislature for qualified employees;
- (6) Conditions of employment in similar occupations outside State Government or the legislative branch;
- (7) The need to maintain appropriate relationships between different occupations in State Government or in the legislative branch; and
- (8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities. [1997, c. 741, §7 (AMD); 1997, c. 741, §12 (AFF).]

D. With respect to controversies over salaries, pensions and insurance, the arbitrator will recommend terms of settlement and may make findings of fact. Such 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. [1973, c. 774, (NEW).]

E. The arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless the aforesaid time limitation shall be extended by the executive director. [1973, c. 774, (NEW).]

[1997, c. 741, §7 (AMD); 1997, c. 741, §12 (AFF) .]

5. Costs. The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator or arbitrators including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding or arbitration proceedings are conducted, must be shared equally by the parties to the proceedings. All other costs must be assumed by the party incurring them.

[1991, c. 622, Pt. O, §9 (AMD) .]

SECTION HISTORY

1973, c. 774, (NEW). 1975, c. 564, §§32-34 (AMD). 1979, c. 501, §3 (AMD). 1985, c. 289, (AMD). 1985, c. 785, §B117 (AMD). 1987, c. 33, (AMD). 1989, c. 596, §N4 (AMD). 1991, c. 622, §O9 (AMD). 1997, c. 741, §§6,7 (AMD). 1997, c. 741, §12 (AFF).

§979-E. BARGAINING UNIT; HOW DETERMINED

1. In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the executive director or his designee shall make the determination, except that anyone excepted from the definition of state employee under section 979-A may not be included in a bargaining unit. The executive director or his designee conducting unit determination proceedings 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. In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or his designee shall consider, among other criteria, if the principal functions of the position 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, 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.

[1975, c. 697, §8 (AMD) .]

2. In order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to insure a clear and identifiable community of interest among employees concerned, and to avoid excessive fragmentation among bargaining units in State Government, the executive director of the board or his designee shall decide in each case the unit appropriate for purposes of collective bargaining.

[1975, c. 612, §1 (AMD) .]

3. 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.

[1975, c. 697, §9 (NEW) .]

SECTION HISTORY

1973, c. 774, (NEW). 1975, c. 612, §1 (AMD). 1975, c. 697, §§8,9 (AMD).

§979-F. DETERMINATION OF BARGAINING AGENT

1. Voluntary recognition. Any state employee organization may file a request with the public employer alleging that a majority of the state 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 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 public employer unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

[1973, c. 774, (NEW) .]

2. Elections.

A. The executive director of the board or his 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, 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 procedures adopted and employed by the Maine Labor Relations Board shall maintain the anonymity of the voter from both the employee organizations and the management representatives involved. [1975, c. 612, §2 (AMD).]

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 state employees within the unit, together with a choice for any state employee to designate that he 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 state 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 of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall 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. [1973, c. 774, (NEW) .]

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. [1973, c. 774, (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. Unit clarification proceedings are not subject to this time limitation and may be brought at any time consistent with section 979-E, subsection 3. [1981, c. 277, (AMD).]

E. The bargaining agent certified by the executive director of the board or his 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 that any public employee at any time may present his 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. [1973, c. 774, (NEW).]

[1981, c. 277, (AMD).]

SECTION HISTORY

1973, c. 774, (NEW). 1975, c. 564, §38 (AMD). 1975, c. 612, §§2,3 (AMD). 1981, c. 277, (AMD).

§979-G. RULE-MAKING PROCEDURE AND REVIEW OF PROCEEDINGS

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

[1993, c. 90, §4 (AMD).]

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

[1993, c. 90, §4 (AMD).]

SECTION HISTORY

1973, c. 774, (NEW). 1975, c. 564, §35 (AMD). 1975, c. 697, §10 (AMD). 1991, c. 143, §4 (AMD). 1993, c. 90, §4 (AMD).

§979-H. PREVENTION OF PROHIBITED ACTS

1. The board is empowered, as provided, to prevent any person, the public employer, any state employee, any legislative employee, any employee organization or any bargaining agent from engaging in any of the prohibited acts enumerated in section 979-C. This power may not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

[1997, c. 741, §8 (AMD); 1997, c. 741, §12 (AFF).]

2. The public employer, any state employee, any legislative employee, any employee organization or any bargaining agent that believes that any person, the public employer, any state employee, any legislative employee, any 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. A complaint may not be filed with the executive director until the complaining party has served a copy thereof upon the party complained of. Upon receipt of such complaint, the executive director or the executive director's 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 must be dismissed by the executive director, subject to review by the board. If a formal hearing is considered 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 before the board. The notice must designate the time and place of hearing for the prehearing conference or the hearing, as appropriate, provided that no hearing may 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 may file a written answer to the complaint and may 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. This subsection does not restrict the right of the board to require the executive director or the executive director's 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 the executive director's designee considers appropriate, subject to review by the board.

[1997, c. 741, §9 (AMD); 1997, c. 741, §12 (AFF) .]

3. 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 discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

[1975, c. 623, §39 (AMD) .]

4. 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.

[1973, c. 774, (NEW) .]

5. 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.

[1975, c. 612, §4 (AMD) .]

6. Whenever a complaint is filed with the executive director of the board, alleging that the public employer has violated section 979-C, subsection 1, paragraph F or alleging that a state employee, a legislative employee or employee organization or bargaining agent has violated section 979-C, 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.

[1997, c. 741, §10 (AMD); 1997, c. 741, §12 (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 or that there is a substantial risk of danger to the public health or safety. 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.

[2011, c. 559, Pt. A, §27 (AMD) .]

8. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 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.

[1973, c. 774, (NEW) .]

SECTION HISTORY

1973, c. 774, (NEW). 1975, c. 564, §36 (AMD). 1975, c. 612, §4 (AMD). 1975, c. 623, §39 (AMD). 1975, c. 697, §§11,12 (AMD). 1991, c. 143, §5 (AMD). 1993, c. 90, §5 (AMD). 1997, c. 741, §§8-10 (AMD). 1997, c. 741, §12 (AFF). 2011, c. 559, Pt. A, §27 (AMD).

§979-I. HEARINGS

1. 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.

[1973, c. 774, (NEW) .]

2. 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.

[1973, c. 774, (NEW) .]

SECTION HISTORY

1973, c. 774, (NEW).

§979-J. REPORTS

1. The board shall annually, on or before the first day of July, make a report to the Governor. The appropriation for the board and the executive director shall be included in the budget of the Department of Labor and authorization for expenditures shall be the responsibility of the chairman or executive director. The board shall prepare a biennial budget for submission to the Legislature for appropriations sufficient to carry out its duties. Authorization for expenditures shall be the responsibility of the board. All expenses of the board and its staff, including all necessary travelling and subsistence expenses, shall be paid on presentation of itemized vouchers therefor approved by the board or the executive director.

[1981, c. 168, §8 (AMD) .]

2. The board shall have the authority to recommend to the Legislature changes or additions to this chapter or to related enactments of law.

[1973, c. 774, (NEW) .]

SECTION HISTORY

1973, c. 774, (NEW). 1975, c. 564, §37 (AMD). 1975, c. 612, §5 (AMD). 1975, c. 771, §284 (AMD). 1981, c. 168, §8 (AMD).

§979-K. GRIEVANCE ARBITRATION

An agreement between a bargaining agent and the public employer may provide for binding arbitration as the final step of a grievance procedure, provided that any such grievance procedure shall be exclusive and shall supersede any otherwise applicable grievance procedure provided by law. If no such provision is contained in the collective bargaining agreement, the parties shall submit their differences for resolution by the State Civil Service Appeals Board. [1985, c. 785, Pt. B, §118 (AMD).]

SECTION HISTORY

1973, c. 774, (NEW). 1981, c. 289, §12 (AMD). 1985, c. 785, §B118 (AMD).

§979-L. 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.

[1973, c. 774, (NEW).]

SECTION HISTORY

1973, c. 774, (NEW).

§979-M. REVIEW OF ARBITRATION AWARDS

1. 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 Rule 80B of the Maine Rules of Civil Procedure.

[1973, c. 774, (NEW) .]

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

[1973, c. 774, (NEW) .]

3. 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.

[1973, c. 774, (NEW) .]

SECTION HISTORY

1973, c. 774, (NEW) .

§979-N. SEPARABILITY

1. 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.

[1973, c. 774, (NEW) .]

2. Nothing in this chapter or any contract negotiated pursuant to this chapter shall in any way be interpreted or allowed to restrict or impair the eligibility of the State of Maine or any of its agencies in obtaining the benefits under any federal grant in aid or assistance programs.

[1973, c. 774, (NEW) .]

SECTION HISTORY

1973, c. 774, (NEW) .

§979-O. NAME

The name of the Public Employees Labor Relations Board is changed to the Maine Labor Relations Board. Whenever the name Public Employees Labor Relations Board appears in law, it shall be construed to mean Maine Labor Relations Board. [1975, c. 564, §38 (NEW) .]

SECTION HISTORY

1975, c. 564, §38 (NEW) .

§979-P. PUBLICATION OF INITIAL PROPOSALS

Either party to negotiations may publicize the parties' written initial collective bargaining proposals. No proposal may be publicized until 10 days after both parties have made their initial proposal. [1979, c. 125, §2 (NEW).]

SECTION HISTORY

1979, c. 125, §2 (NEW).

§979-Q. SEPARATION OF ROLES

(REPEALED)

SECTION HISTORY

1985, c. 785, §B119 (NEW). 1987, c. 673, §2 (AMD). 2007, c. 240, Pt. HH, §15 (RP).

§979-R. CONTINUATION OF GRIEVANCE ARBITRATION PROVISIONS

1. Contract signed before October 1, 2005. If a contract between a public employer and a bargaining agent signed prior to October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract pertaining to disciplinary action remain in effect until the parties execute a new contract.

[2005, c. 324, §2 (NEW) .]

2. Contract signed after October 1, 2005. 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 subsection, 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 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Nothing in this subsection expands, limits or modifies the scope of any grievance arbitration provisions, including procedural requirements.

[2005, c. 324, §2 (NEW) .]

SECTION HISTORY

1997, c. 773, §5 (NEW). 1997, c. 773, §7 (AFF). 2005, c. 324, §2 (RPR).

§979-S. REPRESENTATION OF EMPLOYEES IN CERTAIN LIMITED-PERIOD POSITIONS

This section governs limited-period positions created for former regular employees of the State who are receiving workers' compensation payments from the State when creation of the positions will enable those employees to return to productive employment with the State. A person placed in such a limited-period position retains the employment and bargaining unit status that person had attained under this chapter prior

to the injury that resulted in workers' compensation payments. The scope of representation by the bargaining agent is limited to terms and conditions of employment unrelated to work capacity, the rehabilitation effort or any other matter prescribed or controlled by workers' compensation law unless such terms are specifically negotiated as authorized by Title 39-A, section 110. This section may not be construed to authorize the creation of limited-period positions or to limit the employee's right to designate the employee's collective bargaining agent as that employee's representative concerning matters arising under workers' compensation laws. [2001, c. 427, §1 (NEW); 2001, c. 427, §2 (AFF).]

SECTION HISTORY

2001, c. 427, §1 (NEW). 2001, c. 427, §2 (AFF).

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