§965. Obligation to bargain

1. Negotiations. It is the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purposes of this chapter, their mutual obligation:

A. To meet at reasonable times; [PL 1969, c. 424, §1 (NEW).]

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, as long as the parties have not otherwise agreed in a prior written contract. This obligation is suspended during the period between a referendum approving a new regional school unit and the operational date of the regional school unit, as long as the parties meet at reasonable times during that period; [PL 2009, c. 107, §5 (AMD).]

C. 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 may be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall in accordance with subsection 1-A meet and consult but not negotiate with respect to educational policies, except that educational policies related to preparation and planning time and transfer of teachers are permissive subjects of negotiation; for the purpose of this paragraph, educational policies may not include wages, hours, working conditions or contract grievance arbitration; [PL 2021, c. 96, §1 (AMD).]

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but may not exceed 3 years; and [PL 2009, c. 107, §5 (AMD).]

E. To participate in good faith in the mediation, fact-finding and arbitration procedures required by this section. [PL 1973, c. 788, §119 (AMD).]

[PL 2021, c. 96, §1 (AMD).]

1-A. Meet and consult. The obligation of public employers of teachers and the bargaining agent to meet and consult under subsection 1, paragraph C is governed by this subsection.

A. A public employer of teachers shall give written notice to the bargaining agent when a change in educational policy is planned by the public employer of teachers. Upon receipt of the written notice, the bargaining agent may initiate the meet and consult process by notifying the public employer of teachers, including the superintendent. The public employer of teachers may also initiate the meet and consult process by notifying the bargaining agent. [PL 2021, c. 96, §2 (NEW).]

B. The public employer of teachers shall, upon receipt of a request from the bargaining agent, provide to the bargaining agent information necessary for the bargaining agent and the employees to understand the planned change and make suggestions or express concerns about the planned change. [PL 2021, c. 96, §2 (NEW).]

C. When notice to initiate the meet and consult process is given under paragraph A, authorized representatives of the public employer of teachers and the bargaining agent shall meet and consult at reasonable times and places about the planned change. The parties shall meet and consult openly, honestly and in good faith, and the public employer of teachers shall consider the employees' suggestions and concerns. [PL 2021, c. 96, §2 (NEW).]

D. The authorized representatives of the public employer of teachers shall give full and fair consideration to the employees' suggestions and concerns before the change in educational policy is implemented, and the public employer of teachers shall decide in good faith whether employees' suggestions or concerns can be accommodated. [PL 2021, c. 96, §2 (NEW).]

E. The bargaining agent may initiate the meet and consult process by notifying the public employer of teachers when an existing educational policy of the public employer is changed by practice or if

the written notice required under paragraph A is inadvertently omitted. [PL 2021, c. 96, §2 (NEW).]

[PL 2021, c. 96, §2 (NEW).]

2. Mediation.

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between employers and employees or their representatives and other disputes subject to settlement through mediation. [PL 1975, c. 564, §13 (AMD).]

B. Mediation procedures must be followed whenever either party to a controversy requests such services prior to arbitration, or, in the case of disputes affecting public employers, public employees or their respective representatives as defined, whenever requested by either party prior to arbitration or at any time on motion of the Maine Labor Relations Board or its executive director. Requests for grievance mediation are handled in accordance with paragraph F. [PL 2001, c. 92, §1 (AMD).]

C. The Panel of Mediators, consisting of not less than 5 nor more than 10 impartial members, must be appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. The Maine Labor Relations Board shall supply to the Governor nominations for filling vacancies. Vacancies occurring during a term must be filled for the unexpired term. Members of the panel are entitled to a fee for services in the amount of $300 for up to 4 hours of mediation services provided and $300 for each consecutive period of up to 4 hours thereafter and also are entitled to traveling and all other necessary expenses. Notwithstanding the provisions of Title 5, section 12003-A, subsection 9, members of the panel who provide mediation services in more than one dispute in a given day are entitled to the compensation as provided in this paragraph in each such case. The necessary expenses incurred by the members must be allocated to the mediation session that required the costs. The costs for services rendered and expenses incurred by members of the panel and any state cost allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. [PL 2013, c. 553, §1 (AMD).]

D. 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. [PL 1975, c. 564, §15 (AMD).]

E. The Executive Director of the Maine Labor Relations Board shall serve as Executive Director of the Panel of Mediators. He shall annually, on or before the first day of July make a report to the

Governor. The Executive Director of the Maine Labor Relations Board, upon request of one or both of the parties to a dispute between an employer and its employees, shall, or upon his own motion or motion of the Maine Labor Relations Board may, proffer the services of one or more members of the panel to be selected by him, to serve as mediator or mediators in such a dispute. The member or members so selected shall exert every reasonable effort to encourage the parties to the dispute to settle their differences by conference or other peaceful means. If the mediator or mediators are unable to accomplish this objective and to obtain an amicable settlement of the dispute between the parties, it shall then be the duty of the mediator or mediators to advise the parties of the services available to assist them in settlement of their dispute. At this time, the mediator or mediators shall submit a written report to the executive director stating the action or actions that have been taken and the results of their endeavors. [PL 1979, c. 541, Pt. A, §170 (AMD).]

F. The services of the Panel of Mediators must be provided for grievance mediation only when the parties jointly agree to request grievance mediation services. Notwithstanding this option, neither party is obligated under subsection 1 to bargain over the inclusion of grievance mediation procedures in a collective bargaining agreement. The services of the Panel of Mediators are always available as a technique for impasse resolution in contract negotiations and may be invoked as described in paragraph B. [PL 2001, c. 92, §2 (RPR).]

G. 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. [PL 1973, c. 617, §2 (RPR).]

[PL 2013, c. 553, §1 (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 to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and Conciliation, 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. [PL 1975, c. 564, §17 (RPR).]

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 the appointment. The fact-finding panel shall be appointed from a list maintained by the board and drawn up after consultation with representatives of state and local government administrators, agencies with industrial relations and personnel functions and representatives of employee organizations and of employers. Any person who has actively participated as the mediator in the immediate proceedings for which fact-finding has been called may not sit on that fact-finding panel. The panel shall hear the contending parties to the controversy. The panel may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Bureau of Labor Standards, and has 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. The members of the fact-finding panel shall submit their findings and recommendations only to the parties and to the Executive Director of the Maine Labor Relations Board. [RR 1995, c. 2, §61 (COR).]

C. The parties shall have a period of 30 days, after the submission of findings and recommendations from the fact finders, 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 period, either party or the Executive Director of the Maine Labor Relations Board may, but not until the end of said period unless the parties

otherwise jointly agree, make the fact-finding and recommendations public. [PL 1975, c. 564, §17 (RPR).]

D. If the parties do not agree to follow the fact-finding procedures outlined in paragraph A, they may jointly apply to the executive director or his designee to waive fact-finding. The executive director or his designee may accept or refuse to accept the parties' agreement to waive fact-finding and his decision shall not be reviewable. [PL 1977, c. 696, §204 (AMD).]

[RR 1995, c. 2, §61 (COR).]

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 45-day period, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. Such determinations will be 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 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 such 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 such request, agree upon and select and name a neutral arbitrator. 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. The neutral arbitrator so selected will 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 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 be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed 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 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 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. The results of all arbitration proceedings, recommendations and awards conducted under this section shall 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 of the arbitration panel will submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.
[PL 1975, c. 564, §18 (AMD).]

5. Costs. The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator 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.
[PL 1991, c. 622, Pt. O, §5 (AMD).]

6. Arbitration administration. The cost for services rendered and expenses incurred by the State Board of Arbitration and Conciliation, as defined in section 931, and any state cost allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.
[PL 1991, c. 798, §5 (AMD).]

SECTION HISTORY

PL 1969, c. 424, §1 (NEW). PL 1969, c. 578, §§2-A,2-B (AMD). PL 1971, c. 609, §3 (AMD). PL 1973, c. 458, §§4-8 (AMD). PL 1973, c. 617, §2 (AMD). PL 1973, c. 788, §119 (AMD). PL 1975, c. 361, §§1,2 (AMD). PL 1975, c. 564, §§13-19 (AMD). PL 1975, c. 623, §§37-E (AMD). PL 1975, c. 717, §6 (AMD). PL 1975, c. 771, §280 (AMD). PL 1977, c. 696, §204 (AMD). PL 1979, c. 541, §A170 (AMD). PL 1981, c. 137, §2 (AMD). PL 1985, c. 46 (AMD). PL 1987, c. 468, §§2,4 (AMD). PL 1987, c. 786, §19 (AMD). PL 1989, c. 502, §A108 (AMD). PL 1991, c. 92, §2 (AMD). PL 1991, c. 622, §§O4-6 (AMD). PL 1991, c. 798, §§4,5 (AMD). RR 1995, c. 2, §61 (COR). PL 1997, c. 412, §2 (AMD). PL 2001, c. 92, §§1,2 (AMD). PL 2009, c. 107, §5 (AMD). PL 2013, c. 553, §1 (AMD). PL 2019, c. 240, §1 (AMD). PL 2021, c. 96, §§1, 2 (AMD).