

**TESTIMONY OF BREENA BISSELL
Director, Bureau of Human Resources**

TESTIFYING IN OPPOSITION TO

**L.D. 775, An Act To Include within the Definitions of “Public Employee” and
“Judicial Employee” Those Who Have Been Employed for Less Than 6 Months**

**Before the Joint Standing Committee on Labor and Housing
Hearing date: April 2, 2021**

Sponsored by Representative Michael Sylvester

Senator Hickman, Representative Sylvester, Members of the Committee on Labor and Housing, I am Breena Bissell, Director of Maine’s Bureau of Human Resources. I am here today on behalf of the Administration to testify in opposition to L.D. 775.

L.D. 775 would amend the State Employees Labor Relations Act, covering the executive and legislative branches; the Judicial Employees Labor Relations Act, covering the judicial branch; and the Municipal Public Employees Labor Relations Law, covering primarily non-state public employers. Currently, new employees are excluded under the collective bargaining laws until they have attained six months of employment. This bill would remove that exemption, providing employees coverage by the collective bargaining agreements on their first day of employment, but provides that during the probationary period the employee can be dismissed or disciplined without cause, and that such dismissal or discipline is not subject to the grievance and arbitration provisions of the collective bargaining agreement.

The current exclusion of those with less than six months of employment from the definition of “employee” generally coincides with the initial probationary period, which is required

by Civil Service Law, 5 M.R.S. §7071(5). We regard the initial probationary period as an integral part of the selection process, along with interviews, and reference and background checks. The existing exclusion provides management with the discretion to hire, train, evaluate, and manage the performance of new employees in their first six months without the possibility of having such actions challenged in the grievance and arbitration process.

Although L.D. 775 attempts to reduce its negative impact by purporting to make discipline and discharge not subject to the grievance process, nevertheless, the grievance process can and will be used to allege violations of contract articles *other* than the discipline article as the employer evaluates and manages the performance of new employees to determine if they are a good fit. For example, new employees whose employment is being scrutinized can file a grievance alleging they are being treated unfairly in violation of several contract articles other than the discipline article. When these employees fail to pass probation and are terminated from their position, they can use the grievance process to allege, for example, discrimination, retaliation, or a hostile work environment. We suggest that this will run counter to the intended use of the initial probationary period as the final phase of the hiring process, and will make it more difficult for management to effectively use this initial period as a screening tool. We would also suggest that these new employees are already protected from illegal discrimination and retaliation by numerous laws, including the Maine Human Rights Act.

We believe it is essential that public employers continue to have these six months to evaluate new employees without the statutory probationary period being challenged and scrutinized through the grievance and arbitration process. Sometimes a new hire is simply not a good match with a job, and public employers should have six months to find that out without any

costly and time-consuming arbitration process. If it became more difficult for hiring managers to fail the probation of new employees who are not a good match, there could be the unintended consequence of hiring managers being less willing to take a chance on non-traditional job applicants.

For all these reasons, I urge you to give L.D. 775 an “ought not to pass” report out of this Committee. I am happy to respond to any questions you might have at this time and will be available to you at the work session.