Maine Education Association

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TESTIMONY

In Support of

LD 775: An Act To Include within the Definitions of "Public Employee" and "Judicial Employee" Those Who Have Been Employed for Less Than 6 Months

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Before the Joint Standing Committee on Labor and Housing

April 2nd, 2021

Senator Hickman, Representative Sylvester and other esteemed members of the Labor and Housing Committee,

My name is John Kosinski, and I am here on behalf of the Maine Education Association (MEA) to testify in support of LD 775, An Act To Include within the Definitions of "Public Employee" and "Judicial Employee" Those Who Have Been Employed for Less Than 6 Months. The MEA represents 24,000 educators in our state including public school employees in nearly every public school and faculty and other professionals at the University of Maine and Maine Community College systems.

LD 775 is also a bill that is similar or identical to a bill last year that failed to become law after being passed by this Committee because the Legislature adjourned due to COVID. Last year, the MEA and MSEA and our friends in Maine School Management and the Governor's Office, among others, worked together to develop an amendment to address a concern that has emerged recently in certain school districts. LD 775 represents the compromise reached by the parties last year.[1]

This bill attempts to rectify language in current law that excludes from the definition of public employee anyone with less than six months of service. Here is the exact language for Title 26, Section 962, subsection 6.F (The Municipal Public Employees Labor Relations Law):

§962. Definitions

As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings.

[1] The bill before the Legislature during the 129th Legislative session can be found here: getPDF.asp (mainelegislature.org)

6. Public employee. "Public employee" means any employee of a public employer, except any person:

F. Who has been employed less than 6 months.

Currently, employees in their first six months of employment are not entitled to the benefits or protections under the Act. These employees do not have the right to vote in representative elections choosing a bargaining agent or decertification - and the employee does not have standing to file a Prohibited Practice Charge for conduct prohibited by the employer or other public employees in the union. It is also clear that employees employed for less than six months are separate from temporary, seasonal, or on-call employees, which have separate exclusions. These employees in question, therefore, are those employees hired into permanent positions but who happen to be in their first six months of employment.

While it is clear what the exclusion means under the labor statutes, its application in collective bargaining agreements is less clear. In a 2010 Supreme Court Case, the Court ruled the employer could not assert that the collective bargaining agreement, which articulated a grievance process, did not apply to employees of less than six months when the employer had already actively participated in the grievance process.[2] In this instance, employees of less than six months had the contract applied to them. This leaves the parties in limbo as to what ramifications the six-month exclusion has on contractual application. Removing the language clarifies this.

Additionally, this change would bring the law into conformity with what happens in collective bargaining relationships. Even though as noted in the Bangor case, employees employed less than six months "are not members of any bargaining unit and thus do not receive the wages and benefits of a unionized employee" in practice this is not what occurs. Employees with less than six months are hired under the terms and conditions of the contract. They receive the salary or wages in the contract commensurate with their experience, they receive the contractual contribution toward health insurance, they receive sick days and vacation days according to contractual terms and so on. There is no two-tier system where employees are treated under one set of terms and conditions of employment for their first six months of employment and then the contract thereafter. ln the end this is about bringing the law into alignment with what happens in practice to avoid spurious litigation that does nothing to advance the relationship of the parties since for all practical purposes the employees are treated like they are under the contract from day 1 on the job anyway.

This would also bring conformity among labor relations statutes. The University of Maine System Labor Relations Act and the National Labor Relations Act do not include this six-month exception. Employees are covered under those Acts from the day they are hired into permanent positions. New employees can vote in any union elections that occur, have the protections under those laws and any contracts they are included in apply to them from the first day on the job.

It is important to note, the six-month exclusion is not synonymous with a probationary period, and, in fact, in our discussions last year with other stakeholders we all agreed the intent of this bill was not to alter the probationary period status in anyway. The bill before you states clearly:

[2] See City of Bangor v. AFSCME and MLRB, 449 A.2d 1129 (Me. 1982) "Employees who have been employed for less than six months or who are temporary, seasonal or on-call employees, are not considered public employees and therefore do not have a protected right to join unions, are not members of any bargaining unit and thus do not receive the wages and benefits of a unionized employee."

“During the probationary period, an employee may be dismissed, suspended or otherwise disciplined without cause. Dismissal, suspension or any other disciplinary action against an employee during the probationary period is not subject to the grievance and arbitration provision of the collective bargaining agreement.”

The probationary period is a mandatory subject of bargaining except when controlled or altered by statute. For instance, teachers have a two-year mandatory probationary period in state law. The six-month provision has no bearing on the length of the probationary period. However, in an educational support contract, probationary periods are negotiated and range anywhere from six months to two years in duration. These probationary periods would remain and be unaffected by the removal of the six-month provision. Generally, a probationary period means employees can be terminated without just cause or reason unless additional limitations are negotiated. The six-month exclusion at issue here means they are not even in the bargaining unit. These are two separate issues. Frankly, in practice in support unit contracts the probationary period runs from the date of hire, so as an example if an employee reaches the six-month mark of employment, they are technically covered by the labor relations act and in the bargaining unit for the first time on the same day their probation expires. However, since they have not been technically in the bargaining unit for those six months, it would seem the probation would begin on the first day the contract applies after six months of employment instead of being the end of the probationary period.

For all these reasons, we encourage the Committee to vote “ought to pass” on LD 775 and I am happy to answer any questions you may have.