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Before the Joint Standing Committee on Labor and Housing

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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, sponsored by Representative Sylvester

Senator Hickman, Representative Sylvester, members of the Labor and Housing Committee, I'm Jeff McCabe, Director of Politics and Legislation for the Maine Service Employees Association, Service Employees International Union Local 1989. We are a labor union representing over 13,000 public sector and publicly funded workers and retired workers statewide. We urge you to support 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.

This legislation provides that, for the purposes of the public employee labor relations laws, a person who has been an employee of the State or another public employer for less than 6 months is considered a public employee.

The purpose of Maine's public sector collective bargaining laws is to promote the improvement of relationships between public employers and their employees by recognizing the right of public employees to join together in a union to bargain for better pay, benefits and terms and conditions of employment. Core to this is the right to stand together to protect the rights and benefits that have been won by previous generations of employees who filled the same positions. This purpose, we submit, is undermined by an outdated and arbitrary definition that excludes public employees who have been employed for less than six months.

At the outset, it is important to note what this legislation leaves in place. Currently, a person who has been an employee of the State or another public employer for less than 6 months may be dismissed, suspended or otherwise disciplined without cause during the probationary period, and such disciplinary actions during the employee's first six months of employment are not subject to the grievance and arbitration provision of the collective bargaining agreement. This bill does not eliminate such probationary periods or otherwise entitle employees to just cause protections during their first six months of employment.

Rather, this bill eliminates an arbitrary distinction between employees that has allowed public employers, including Maine's Executive Branch, to argue that new employees have no rights under the contract. This means public employers can deny new employees the contractual right to work in workplace free from unlawful discrimination.

We have numerous examples of employees in their first six months who have raised significant concerns about disability, age, gender discrimination, sexual harassment only to suddenly be told that their performance is subpar and unceremoniously terminated. We have an additional example from just this last year where an employee was terminated immediately after raising concerns about COVID-19 in the workplace.

Because these employees are excluded under State labor, the State denies employees union representation at the time of their dismissal, and the State refuses to acknowledge any grievances filed by the union on the employees' behalf. Moreover, the State refuses to provide the union with any information about either the employees' complaints or the alleged performance issues that led to their termination. As a result, we have no indication that the complained-of discrimination was ever investigated or whether there was any valid, non-pretextual basis for the termination.

Accordingly, this statutory distinction is used by employers, including the Executive Branch of the State of Maine, to shield inappropriate and discriminatory behavior solely by supervisors.

The sole recourse in these circumstances is for the individual employee to retain outside counsel to bring a human rights complaint – which is often cost-prohibitive for a brand-new employee who has just lost their job.

Notably, there is no analogous exclusion under private sector labor law, where employees are regularly subjected to contractual probationary periods where they may be terminated without just cause, but they are still protected by contractual prohibitions on discrimination and still have the right to union representation. Nor are there analogous exclusions under the Maine Human Rights Act or the Maine Whistleblower Protection Act. Indeed, even Maine's public sector University Employees Labor Relations Act does not have the same six-month exclusion from coverage.

This arbitrary distinction regarding new employees negatively impacts employees in other respects as well. Employers can and do deny new employees certain benefits, not based on any determination that these employees should not enjoy these benefits, but because the employers feel they can, because they argue that the employees' unions cannot enforce their contract on their behalf.

In 2019, MSEA and the Executive Branch negotiated the first paid parental leave provision in our contracts covering our four Executive Branch bargaining units. The language in that provision is quite straightforward and provides for two weeks of paid parental leave, beginning on and directly following the birth or adoption of a child or children. In the fall of 2019, after the contracts had been ratified, however, we heard from multiple employees in bargaining unit positions that they had been told they would not be eligible for parental leave because they were in their first six months of employment. When we raised this question to the State's Director of Human Resources, we were told that while some benefits, like sick and vacation leave, are provided to employees in their first six months by Civil Service rules, benefits negotiated by contract such as bereavement leave and parental leave are not. The State took the position that the employees' eligibility for these benefits is not based on whether their position is covered by the collective bargaining agreement but, instead, on this definition in state labor law. In other words, different employees doing the same work can have different eligibility for benefits, even when they are both in a position covered by the same contract, based on how long they have been employed. This dilutes the purpose of collective bargaining laws and undermines the strength of our contracts by allowing employers to treat some employees differently for utterly arbitrary reasons.

As a result, employees who were led to believe that they were entitled to these benefits, in some cases by HR personnel who were later corrected, were unable to access them, due solely to their short tenure. One employee was two months into their state employment when their child was born and because they were unable to access these benefits, they had to rely on paid holidays and exhaust all the leave that they had accrued in order to be able to take a single week off to spend with their new child. That employee had decided to accept a State position in part because of the availability of paid parental leave. Another employee was able to take two weeks off anyway, but nearly all of that time was unpaid because they were deemed ineligible for the contractual benefit because they had only been employed for approximately four months at the time.

We filed a grievance on the denial of these employees' eligibility for paid parental leave; the Chief Counsel for the State's Office of Employee Relations refused to accept the grievance, despite having accepted other class actions filed at a similar level, arguing that no valid grievance could be filed on behalf of an employee or group of employees who had been employed for less than 6 months. The State has never argued that there was an operational or substantive reason why these employees

should not be eligible for this benefit; the entirety of their position is based on their position that MSEA is legally unable to enforce that contractual provision on behalf of these employees.

Again, we ask for your support of this bill. Upon passage, new employees will remain subject to a contractual probationary period, during which they will have no just cause protections and may be terminated for any legal reason. However, they will gain the statutory right to union representation, in addition to the ability to enforce their contractual rights through the grievance and arbitration process. The committee may want to ask those opposing this bill how claims of harassment, discrimination and other issues are handled for people who are in their first six months of employment without access to representation.

The language of the bill before you is based on compromise that the stakeholders agree upon last session and from our prospective issues from the pandemic have only made this bill more of a priority.

Thank you and I would be glad to answer any questions.