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SECOND REGULAR SESSION-2020

Legislative Document

No. 2090

S.P. 739

In Senate, January 30, 2020

An Act To Amend the Laws Governing Arbitration under Certain Public Employees Labor Relations Laws

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Speaker GIDEON of Freeport and
Senators: BELLOWS of Kennebec, LIBBY of Androscoggin, VITELLI of Sagadahoc,
Representatives: FECTEAU of Biddeford, MOONEN of Portland, SYLVESTER of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §965, sub-§4**, as amended by PL 1975, c. 564, §18, is further
3 amended to read:

4 **4. Arbitration.** In addition to the 30-day period referred to in subsection 3, the
5 parties ~~shall~~ have 15 more days, making a total period of 45 days from the submission of
6 findings and recommendations, in which to make a good faith effort to resolve their
7 controversy.

8 If the parties have not resolved their controversy by the end of ~~said~~ the 45-day period,
9 they may jointly agree to an arbitration procedure ~~which~~ that will result in a binding
10 determination of their controversy. Such determinations ~~will be~~ are subject to review by
11 the Superior Court in the manner specified by section 972.

12 If they do not jointly agree to such an arbitration procedure within 10 days after the end
13 of ~~said~~ the 45-day period, then either party may, by written notice to the other, request
14 that their differences be submitted to a board of 3 arbitrators. The bargaining agent and
15 the public employer shall within 5 days of ~~such~~ the request each select and name one
16 arbitrator and shall immediately thereafter notify each other in writing of the name and
17 address of the person so selected. The 2 arbitrators so selected and named shall, within 10
18 days from ~~such~~ the request, agree upon and select and name a neutral arbitrator from the
19 panel of arbitrators established in accordance with subsection 4-A. ~~If either party shall~~
20 ~~not select its arbitrator or if the 2 arbitrators shall fail to agree upon, select and name a~~
21 ~~neutral arbitrator within said 10 days, either party may request the American Arbitration~~
22 ~~Association to utilize its procedures for the selection of the neutral arbitrator. As soon as~~
23 ~~possible after receipt of such request, the neutral arbitrator will be selected in accordance~~
24 ~~with rules and procedures prescribed by the American Arbitration Association for making~~
25 ~~such selection. If the 2 arbitrators cannot in 10 days select a neutral arbitrator, the~~
26 ~~executive director shall appoint the neutral arbitrator from the panel of arbitrators~~
27 ~~established in accordance with subsection 4-A.~~ The neutral arbitrator so selected ~~will~~
28 may not, without the consent of both parties, be the same person who was selected as
29 mediator pursuant to subsection 2 nor any member of the fact-finding board selected
30 pursuant to subsection 3. As soon as possible after the selection of the neutral arbitrator,
31 the 3 arbitrators ~~or if either party shall not have selected its arbitrator, the 2 arbitrators,~~
32 ~~as the case may be,~~ shall meet with the parties or their representatives, or both, forthwith,
33 either jointly or separately, make inquiries and investigations, hold hearings, or take such
34 other steps as they ~~deem~~ determine appropriate. ~~If the neutral arbitrator is selected by~~
35 ~~utilizing the procedures of the American Arbitration Association, the arbitration~~
36 ~~proceedings will be conducted in accordance with the rules and procedures of the~~
37 ~~American Arbitration Association.~~ The hearing ~~shall~~ must be informal, and the rules of
38 evidence prevailing in judicial proceedings ~~shall~~ are not ~~be~~ binding. Any and all
39 documentary evidence and other data ~~deemed~~ determined relevant by the arbitrators may
40 be received in evidence. The arbitrators ~~shall~~ have the power to administer oaths and to
41 require by subpoena the attendance and testimony of witnesses, the production of books,
42 records and other evidence relative or pertinent to the issues represented to them for
43 determination.

1 If the controversy is not resolved by the parties themselves, the arbitrators shall proceed
2 as follows: ~~With respect to a controversy over salaries, pensions and insurance, the~~
3 ~~arbitrators will recommend terms of settlement and may make findings of fact; such~~
4 ~~recommendations and findings will be advisory only and will be made, if reasonably~~
5 ~~possible, within 30 days after the selection of the neutral arbitrator; the arbitrators may in~~
6 ~~their discretion, make such recommendations and findings public, and either party may~~
7 ~~make such recommendations and findings public if agreement is not reached with respect~~
8 ~~to such findings and recommendations within 10 days after their receipt from the~~
9 ~~arbitrators; with respect to a controversy over all subjects other than salaries, pensions~~
10 ~~and insurance, the arbitrators shall make determinations with respect thereto if reasonably~~
11 ~~possible within 30 days after the selection of the neutral arbitrator; such determinations~~
12 ~~may be made public by the arbitrators or either party; and if made by a majority of the~~
13 ~~arbitrators, such determinations will be are binding on both parties and the parties will~~
14 ~~shall enter an agreement or take whatever other action that may be appropriate to carry~~
15 ~~out and effectuate such binding determinations; and such determinations will be are~~
16 ~~subject to review by the Superior Court in the manner specified by section 972.~~
17 Notwithstanding section 964, subsection 2, if the public employer fails to enter into an
18 agreement or take whatever other action may be appropriate to carry out and effectuate
19 binding determinations made by arbitrators pursuant to this subsection, the public
20 employees represented by the bargaining agent, except for public employees whose duties
21 include protecting public safety, may engage in a strike. The results of all arbitration
22 proceedings, recommendations and awards conducted under this section shall must be
23 filed with the Maine Labor Relations Board at the offices of its executive director
24 simultaneously with the submission of the recommendations and award to the parties. In
25 the event the parties settle their dispute during the arbitration proceeding, the arbitrator or
26 the ~~chairman chair~~ of the arbitration panel will shall submit a report of ~~his~~ the arbitrator's
27 or chair's activities to the Executive Director of the Maine Labor Relations Board not
28 more than 5 days after the arbitration proceeding has terminated.

29 In reaching a decision under this subsection, the arbitrator shall consider the following:

30 A. The interests and welfare of the public and the financial ability of the public
31 employer to finance the cost items proposed by each party to the impasse;

32 B. A comparison of the wages, hours and working conditions of the employees
33 involved in the arbitration proceeding with the wages, hours and working conditions
34 of other employees performing similar services in public and private employment in
35 other jurisdictions competing in the same labor market;

36 C. The overall compensation presently received by the employees including direct
37 wage compensation, vacation, holidays and excused time, insurance and pensions,
38 medical and hospitalization benefits, the continuity and stability of employment and
39 all other benefits received;

40 D. Factors other than those specified in paragraphs A to C that are normally and
41 traditionally taken into consideration in the determination of wages, hours and
42 working conditions through voluntary collective bargaining, mediation, fact-finding,
43 arbitration or otherwise between the parties, in public or private employment,
44 including the average Consumer Price Index;

45 E. The need of the public employer for qualified employees;

- 1 F. Conditions of employment in similar occupations outside public employment;
2 G. The need to maintain appropriate relationships between different occupations in
3 public employment; and
4 H. The need to establish fair and reasonable conditions in relation to job
5 qualifications and responsibilities.

6 Cost items in a collective bargaining agreement that is arrived at through arbitration in
7 accordance with this subsection may not be submitted for inclusion in the municipality's
8 operating budget for the fiscal year in which the agreement is ratified, but must be
9 submitted for inclusion in the municipality's operating budget for the fiscal year following
10 the fiscal year in which the agreement is ratified.

11 **Sec. 2. 26 MRSA §965, sub-§4-A** is enacted to read:

12 **4-A. Panel of arbitrators.** The Governor shall appoint a panel of arbitrators,
13 consisting of no fewer than 5 nor more than 10 impartial arbitrators, to serve as impartial
14 arbitrators of the interests of the public in the settlement of disputes between employers
15 and employees or their representatives. The board shall supply to the Governor
16 nominations for appointment to the panel. The arbitrators must reside in the State and be
17 neutral and unbiased. The board shall adopt rules governing the necessary qualifications
18 for appointment to the panel and allowable compensation for panel members.

19 **Sec. 3. 26 MRSA §979-D, sub-§4, ¶B,** as enacted by PL 1973, c. 774, is
20 amended to read:

21 B. If the parties have not resolved their controversy by the end of ~~said~~ the 45-day
22 period, either party may petition the board to initiate compulsory final and binding
23 arbitration of the negotiations impasse. On receipt of the petition, the executive
24 director of the board shall investigate to determine if an impasse has been reached. If
25 ~~he so~~ the executive director determines that an impasse has been reached, he the
26 executive director shall issue an order requiring arbitration and requesting the parties
27 to select one or more arbitrators. If the parties within 10 days after the issuance of the
28 ~~order have not selected an arbitrator or a Board of Arbitration, the~~ The board shall
29 ~~then~~ order each party to select one arbitrator, and if these 2 arbitrators cannot in 5
30 ~~days select a 3rd neutral arbitrator, the board shall submit a list from which the~~
31 ~~parties may alternately strike names until a single name is left, who shall be~~
32 ~~appointed by the board as arbitrator~~ the 2 arbitrators so named shall select a 3rd
33 neutral arbitrator from the panel of arbitrators established in accordance with section
34 965, subsection 4-A. If the 2 arbitrators cannot in 10 days select a neutral arbitrator,
35 the executive director shall appoint the neutral arbitrator from the panel of arbitrators
36 established in accordance with section 965, subsection 4-A.

37 **Sec. 4. 26 MRSA §979-D, sub-§4, ¶D,** as enacted by PL 1973, c. 774, is
38 amended to read:

39 D. With respect to controversies over salaries, pensions and insurance, the arbitrator
40 ~~will~~ shall recommend terms of settlement and may make findings of fact. Such
41 recommendations and findings ~~shall be~~ are advisory and ~~shall be~~ are not binding upon

1 the parties. The determination by the arbitrator on all other issues shall be is final and
2 binding on the parties.

3 **Sec. 5. 26 MRSA §979-D, sub-§4, ¶F** is enacted to read:

4 F. Notwithstanding section 979-C, subsection 2, if the public employer fails to enter
5 into an agreement or take whatever other action may be appropriate to carry out and
6 effectuate binding determinations made by arbitrators pursuant to this subsection, the
7 state or legislative employees represented by the bargaining agent, except for
8 employees whose duties include protecting public safety, may engage in a strike.

9 **Sec. 6. 26 MRSA §979-D, sub-§4, ¶G** is enacted to read:

10 G. Cost items in a collective bargaining agreement arrived at through arbitration in
11 accordance with this subsection:

12 (1) May not be submitted for inclusion in the Governor's operating budget for the
13 fiscal year in which the agreement is ratified; and

14 (2) Must be submitted for inclusion in the Governor's operating budget for the
15 fiscal year following the fiscal year in which the agreement is ratified.

16 **Sec. 7. 26 MRSA §1026, sub-§4, ¶A**, as corrected by RR 2009, c. 2, §76, is
17 amended to read:

18 A. At any time after participating in the procedures set forth in subsections 2 and 3,
19 either party, or the parties jointly, may petition the board to initiate arbitration
20 procedures. On receipt of the petition, the executive director shall within a reasonable
21 time determine if an impasse has been reached; the determination must be made
22 administratively, with or without hearing, and is not subject to appeal. If the
23 executive director so determines, the executive director shall issue an order requiring
24 arbitration and requesting the parties to select one or more arbitrators. If the parties,
25 within 10 days after the issuance of the order, have not selected an arbitrator or a
26 Board of Arbitration, the executive director shall then order each party to select one
27 arbitrator and the 2 arbitrators so selected shall to select a 3rd neutral arbitrator from
28 the panel of arbitrators established in accordance with section 965, subsection 4-A. If
29 the 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the executive director
30 shall submit identical lists to the parties of 5 or more qualified arbitrators of
31 recognized experience and competence appoint the 3rd neutral arbitrator from the
32 panel of arbitrators established in accordance with section 965, subsection 4-A. Each
33 party has 7 days from the submission of the list to delete any names objected to,
34 number the remaining names indicating the order of preference and return the list to
35 the executive director. In the event a party does not return the list within the time
36 specified, all parties named therein are deemed acceptable. From the arbitrators who
37 have been approved by both parties and pursuant to the order of mutual preference,
38 the executive director shall appoint a neutral arbitrator. If the parties fail to agree
39 upon any arbitrators named, or if for any other reason the appointment cannot be
40 made from the initial list, the executive director shall then submit a 2nd list of 5 or
41 more additional qualified arbitrators of recognized experience and competence from
42 which they shall strike names with the determination as to which party shall strike
43 first being determined by a random technique administered through the Executive

1 Director of the Maine Labor Relations Board. Thereafter, the parties shall alternately
2 strike names from the list of names submitted, provided that, when the list is reduced
3 to 4 names, the 2nd from the last party to strike shall be entitled to strike 2 names
4 simultaneously, after which the last party to strike shall so strike one name from the
5 then 2 remaining names, such that the then remaining name shall identify the person
6 who must then be appointed by the executive director as the neutral arbitrator.

7 Nothing in this subsection may be construed as preventing the parties, as an
8 alternative to procedures in the preceding paragraph, from jointly agreeing to elect
9 arbitration from either the Federal Mediation and Conciliation Service or the
10 American Arbitration Association, under the procedures, rules and regulations of that
11 association, provided that these procedures, rules and regulations are not inconsistent
12 with paragraphs B and C.

13 **Sec. 8. 26 MRSA §1026, sub-§4, ¶B**, as amended by PL 1983, c. 153, §2, is
14 further amended to read:

15 B. If the controversy is not resolved by the parties themselves, the arbitrators shall
16 proceed as follows: ~~With respect to a controversy over salaries, pensions and~~
17 ~~insurance, the arbitrators will recommend terms of settlement and may make findings~~
18 ~~of fact; such recommendations and findings will be advisory only and will be made,~~
19 ~~if reasonably possible, within 60 days after the selection of the neutral arbitrator. The~~
20 ~~arbitrators may in their discretion make such recommendations and findings public,~~
21 ~~and either party may make such recommendations and findings public if agreement is~~
22 ~~not reached with respect to such findings and recommendations within 10 days after~~
23 ~~their receipt from the arbitrators. With with respect to a controversy over all subjects~~
24 ~~other than salaries, pensions and insurance, the arbitrators shall make determinations~~
25 ~~with respect thereto if reasonably possible within 60 days after the selection of the~~
26 ~~neutral arbitrator. Such determinations may be made public by the arbitrators or~~
27 ~~either party and if made by a majority of the arbitrators, such determinations will be~~
28 ~~are binding on both parties and the parties will shall enter an agreement or take~~
29 ~~whatever other action that may be appropriate to carry out and effectuate such~~
30 ~~binding determinations, and such determinations will be are subject to review by the~~
31 ~~Superior Court in the manner specified by section 1033. The results of all arbitration~~
32 ~~proceedings, recommendations and awards conducted under this section shall must be~~
33 ~~filed with the Maine Labor Relations Board at the offices of its executive director~~
34 ~~simultaneously with the submission of the recommendations and award to the parties.~~
35 ~~In the event the parties settle their dispute during the arbitration proceeding, the~~
36 ~~arbitrator or the ~~chairman~~ chair of the arbitration panel will shall submit a report of~~
37 ~~his the arbitrator's or chair's activities to the Executive Director of the Maine Labor~~
38 ~~Relations Board not more than 5 days after the arbitration proceeding has terminated.~~

39 **Sec. 9. 26 MRSA §1026, sub-§4, ¶D** is enacted to read:

40 D. Notwithstanding section 1027, subsection 2, if the university, academy or
41 community college fails to enter into an agreement or take whatever other action may
42 be appropriate to carry out and effectuate binding determinations made by arbitrators
43 pursuant to this subsection, the university, academy or community college employees

1 represented by the bargaining agent, except for employees whose duties include
2 protecting public safety, may engage in a strike.

3 **Sec. 10. 26 MRSA §1026, sub-§4, ¶E** is enacted to read:

4 E. Cost items in a collective bargaining agreement arrived at through arbitration in
5 accordance with this subsection:

6 (1) May not be submitted for inclusion in the Governor's operating budget for the
7 fiscal year in which the agreement is ratified; and

8 (2) Must be submitted for inclusion in the Governor's operating budget for the
9 fiscal year following the fiscal year in which the agreement is ratified.

10 **Sec. 11. 26 MRSA §1285, sub-§4,** as enacted by PL 1983, c. 702, is amended to
11 read:

12 **4. Arbitration.**

13 A. In addition to the 30-day period referred to in subsection 3, the parties shall have
14 15 more days, making a total of 45 days from the submission of findings and
15 recommendations, in which to make a good faith effort to resolve their controversy.

16 B. If the parties have not resolved their controversy by the end of that 45-day period,
17 either party may petition the board to initiate compulsory final and binding arbitration
18 of the negotiations' impasse. On receipt of the petition, the executive director of the
19 board shall investigate to determine if an impasse has been reached. If ~~he~~ the
20 executive director so determines, ~~he~~ the executive director shall issue an order
21 requiring arbitration and requesting ~~the parties to select one or more arbitrators. If~~
22 ~~the parties, within 10 days after the issuance of the order, have not selected an~~
23 ~~arbitrator or an arbitration panel, the board shall then order each party to select one~~
24 ~~arbitrator and, if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the~~
25 ~~board shall submit a list from which the parties may alternately strike names until a~~
26 ~~single name is left, who shall be appointed by the board as arbitrator~~ the 2 arbitrators
27 so selected to select a 3rd neutral arbitrator from the panel of arbitrators established
28 in accordance with section 965, subsection 4-A. If the 2 arbitrators cannot in 5 days
29 select a 3rd neutral arbitrator, the executive director shall appoint the 3rd neutral
30 arbitrator from the panel of arbitrators established in accordance with section 965,
31 subsection 4-A. In reaching a decision under this paragraph, the arbitrator shall
32 consider the following factors:

33 (1) The interests and welfare of the public and the financial ability of State
34 Government to finance the cost items proposed by each party to the impasse;

35 (2) Comparison of the wages, hours and working conditions of the employees
36 involved in the arbitration proceeding with the wages, hours and working
37 conditions of other employees performing similar services in the executive and
38 legislative branches of government and in public and private employment in
39 other jurisdictions competing in the same labor market;

40 (3) The overall compensation presently received by the employees, including
41 direct wage compensation, vacation, holidays and excused time, insurance and

1 pensions, medical and hospitalization benefits, the continuity and stability of
2 employment, and all other benefits received;

3 (4) Such other factors not confined to the foregoing, which are normally and
4 traditionally taken into consideration in the determination of wages, hours and
5 working conditions through voluntary collective bargaining, mediation, fact-
6 finding, arbitration or otherwise between the parties, in the public service or in
7 private employment, including the average Consumer Price Index;

8 (5) The need of the Judicial Department for qualified employees;

9 (6) Conditions of employment in similar occupations outside State Government;

10 (7) The need to maintain appropriate relationships between different occupations
11 in the Judicial Department; and

12 (8) The need to establish fair and reasonable conditions in relation to job
13 qualifications and responsibilities.

14 C. Cost items in a collective bargaining agreement arrived at through arbitration in
15 accordance with this subsection:

16 (1) May not be submitted for inclusion in the Judicial Department's operating
17 budget for the fiscal year in which the agreement is ratified; and

18 (2) Must be submitted for inclusion in the Judicial Department's operating
19 budget for the fiscal year following the fiscal year in which the agreement is
20 ratified.

21 With respect to controversies over ~~salaries~~, pensions and insurance, the arbitrator shall
22 recommend terms of settlement and may make findings of fact. The recommendations
23 and findings ~~shall be~~ are advisory and ~~shall be~~ are not be binding upon the parties. The
24 determination by the arbitrator on all other issues ~~shall be~~ is final and binding on the
25 parties. Notwithstanding section 1284, subsection 2, if the public employer fails to enter
26 into an agreement or take whatever other action may be appropriate to carry out and
27 effectuate binding determinations made by arbitrators pursuant to this subsection, the
28 judicial employees represented by the bargaining agent, except for employees whose
29 duties include protecting public safety, may engage in a strike.

30 Any hearing ~~shall~~ must be informal and the rules of evidence for judicial proceedings
31 ~~shall be~~ are not be binding. Any documentary evidence and other information ~~deemed~~
32 determined relevant by the arbitrator may be received in evidence. The arbitrator may
33 administer oaths and require by subpoena attendance and testimony of witnesses and
34 production of books and records and other evidence relating to the issues presented. The
35 arbitrator ~~shall have~~ has a period of 30 days from the termination of the hearing in which
36 to submit ~~his~~ a report to the parties and to the board, unless that time limitation is
37 extended by the executive director.

38 **Sec. 12. 26 MRSA §1285, sub-§5, ¶E**, as enacted by PL 1983, c. 702, is
39 amended to read:

40 E. In reaching a decision, the mediator-arbitrator shall consider the factors specified
41 in section 1285, subsection 4. With respect to controversies over ~~salaries~~, pensions

1 and insurance, the mediator-arbitrator shall recommend terms of settlement and may
2 make findings of fact. Such recommendations and findings ~~shall be~~ are advisory and
3 ~~shall~~ are not be binding on the parties. The determination of the mediator-arbitrator
4 on all other issues ~~shall be~~ is final and binding on the parties.

5 **Sec. 13. Effective date.** This Act takes effect July 1, 2021.

6 **SUMMARY**

7 Under current law, arbitrations under labor relations laws governing municipal public
8 employees, University of Maine System employees, state employees and judicial
9 employees require that each party select one arbitrator and those 2 arbitrators select a
10 neutral 3rd arbitrator. This bill requires that the neutral 3rd arbitrator be selected from a
11 panel of arbitrators appointed by the Governor from a list of nominations supplied by the
12 Maine Labor Relations Board. Under the bill, appointees to the panel of arbitrators serve
13 as impartial arbitrators of the interests of the public in the settlement of disputes between
14 employers and employees or their representatives, and each appointee must reside in the
15 State. In addition, this bill:

16 1. Amends the labor relations laws governing municipal public employees and
17 University of Maine System employees to provide that determinations by arbitrators with
18 respect to controversies over all subjects, including salaries, pensions and insurance, are
19 final and binding on the parties;

20 2. Amends the labor relations laws governing state employees to provide that, with
21 respect to controversies over salaries, an arbitrator's determinations are final and binding
22 on the parties;

23 3. Amends the labor relations laws governing judicial employees to provide that an
24 arbitrator's determinations with respect to controversies over all subjects, including
25 salaries, pensions and insurance, are final and binding on the parties and that, with respect
26 to controversies over salaries, determinations by mediator-arbitrators are final and
27 binding on the parties;

28 4. Adds specific factors an arbitrator must consider when a controversy is not
29 resolved between a public employer and bargaining agent under the municipal public
30 employees labor relations law;

31 5. Provides that, if a public employer fails to enter into an agreement to carry out and
32 effectuate binding determinations made by arbitrators, the public employees are
33 authorized to strike;

34 6. Requires that cost items in a collective bargaining agreement arrived at through
35 arbitration may not be included in the state or local operating budget, as relevant, for the
36 current fiscal year, but must instead be submitted for inclusion in the operating budget for
37 the following fiscal year; and

38 7. Provides an effective date for the changes made in the bill of July 1, 2021.