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H.P. 537

House of Representatives, February 28, 2013

An Act To Ensure the Voluntary Membership of Public Employees in Unions

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LOCKMAN of Amherst.
Cosponsored by Senator CUSHING of Penobscot and
Representatives: CHASE of Wells, CRAFTS of Lisbon, HAYES of Buckfield, KESCHL of
Belgrade, PARRY of Arundel, REED of Carmel, VOLK of Scarborough, WINCHENBACH of
Waldoboro.

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

2 **Sec. 1. 20-A MRSA §1464, sub-§2, ¶H,** as amended by PL 2009, c. 580, §6, is
3 further amended to read:

4 H. When bargaining units with different bargaining agents must be merged into a
5 single regional school unit-wide bargaining unit ~~pursuant to this section~~, the
6 bargaining agent of the merged bargaining unit must be selected in accordance with
7 ~~Title 26, section 967 except as modified in~~ this section.

8 (1) A petition for an election to determine the bargaining agent must be filed
9 with the Maine Labor Relations Board by any of the current bargaining agents or
10 the regional school unit.

11 (2) The petition must be filed not more than 90 days prior to the first August 31st
12 occurring after the 3rd anniversary date of the operational date of the regional
13 school unit established pursuant to section 1463, subsection 1.

14 (3) The election ballot may contain only the names of the bargaining agents of
15 bargaining units that will be merged into the regional school unit-wide bargaining
16 unit and the choice of "no representative," but no other choices. No showing of
17 interest is required from any such bargaining agent other than its current status as
18 representative.

19 (4) The obligation to bargain with existing bargaining agents continues from the
20 operational date established pursuant to section 1463, subsection 1 until the
21 determination of the bargaining agent of the regional school unit-wide bargaining
22 unit under this section; but in no event may any collective bargaining agreement
23 that is executed after the operational date extend beyond the first August 31st
24 occurring after the 3rd anniversary date of the operational date of the regional
25 school unit.

26 (5) The Maine Labor Relations Board shall expedite to the extent practicable all
27 petitions for determination of the bargaining agent in the regional school unit-
28 wide bargaining unit filed pursuant to this section.

29 (6) The bargaining units must be merged into a regional school unit-wide
30 bargaining unit as of the date of certification of the results of the election by the
31 Maine Labor Relations Board or the expiration of the collective bargaining
32 agreements in the unit, whichever occurs later.

33 (7) Until the first August 31st occurring after the 3rd anniversary date of the
34 operational date of the regional school unit, existing bargaining agents shall
35 continue to represent the bargaining units that they represented on the day prior
36 to the operational date of the regional school unit. If necessary, each bargaining
37 agent and the regional school unit must negotiate an interim collective bargaining
38 agreement to expire on the first August 31st occurring after the 3rd anniversary
39 date of the operational date of the regional school unit.

40 (8) When there are 2 or more bargaining units in which there are employees who
41 are represented either by the same bargaining agent or by separate local affiliates
42 of the same state labor organization that will be merged into a regional school

1 unit-wide bargaining unit with one or more other bargaining units pursuant to the
2 election procedures described in this paragraph, the bargaining units that are
3 represented either by the same bargaining agent or by separate local affiliates of
4 the same state labor organization must merge as of the operational date. The
5 procedures for merger of separate local affiliates of the same state labor
6 organization described in paragraph E must be followed if applicable.

7 **Sec. 2. 20-A MRSA §1464-A, sub-§2, ¶F**, as enacted by PL 2009, c. 580, §8, is
8 amended to read:

9 F. When bargaining units with different bargaining agents must be merged into a
10 single alternative organizational structure-wide bargaining unit ~~pursuant to this~~
11 ~~section~~, the bargaining agent of the merged bargaining unit must be selected in
12 accordance with ~~Title 26, section 967~~ ~~except as modified in~~ this section.

13 (1) A petition for an election to determine the bargaining agent must be filed
14 with the Maine Labor Relations Board by any of the current bargaining agents or
15 the alternative organizational structure.

16 (2) The petition must be filed not more than 90 days prior to the first August 31st
17 occurring after either the 3rd anniversary date of the operational date of the
18 alternative organizational structure or the date on which positions are transferred
19 from member school units to the alternative organizational structure, whichever
20 is later.

21 (3) The election ballot may contain only the names of the bargaining agents of
22 bargaining units that will be merged into the alternative organizational structure-
23 wide bargaining unit and the choice of "no representative," but no other choices.
24 A showing of interest is not required from any such bargaining agent other than
25 its current status as representative.

26 (4) The obligation to bargain with existing bargaining agents continues from the
27 operational date of the alternative organizational structure or the date on which
28 positions are transferred from member school units to the alternative
29 organizational structure, whichever is later, until the determination of the
30 bargaining agent of the alternative organizational structure-wide bargaining unit
31 under this section; but in no event may any collective bargaining agreement that
32 is executed after the operational date extend beyond the first August 31st
33 occurring after either the 3rd anniversary date of the operational date of the
34 alternative organizational structure or the date on which positions are transferred
35 from member school units to the alternative organizational structure, whichever
36 is later.

37 (5) The Maine Labor Relations Board shall expedite to the extent practicable all
38 petitions for determination of the bargaining agent in the alternative
39 organizational structure filed pursuant to this section.

40 (6) The bargaining units must be merged into an alternative organizational
41 structure-wide bargaining unit as of the date of certification of the results of the
42 election by the Maine Labor Relations Board or the expiration of the collective
43 bargaining agreements in the unit, whichever occurs later.

1 (7) Until the first August 31st occurring after either the 3rd anniversary date of
2 the operational date of the alternative organizational structure or the date on
3 which positions are transferred from member school units to the alternative
4 organizational structure, whichever is later, existing bargaining agents shall
5 continue to represent the bargaining units that they represented on the day prior
6 to the operational date of the alternative organizational structure. If necessary,
7 each bargaining agent and the alternative organizational structure must negotiate
8 interim collective bargaining agreements to expire the first August 31st occurring
9 after either the 3rd anniversary date of the operational date of the alternative
10 organizational structure or the date on which positions are transferred from
11 member school units to the alternative organizational structure, whichever is
12 later.

13 (8) When there are 2 or more bargaining units in which there are employees who
14 are represented either by the same bargaining agent or by separate local affiliates
15 of the same state labor organization that will be merged into an alternative
16 organizational structure-wide bargaining unit with one or more other bargaining
17 units pursuant to the election procedures described in this paragraph, the
18 bargaining units that are represented either by the same bargaining agent or by
19 separate local affiliates of the same state labor organization must merge as of the
20 operational date. The procedures for merger of separate local affiliates of the
21 same state labor organization described in paragraph D must be followed if
22 applicable.

23 **Sec. 3. 26 MRSA §962, sub-§2**, as amended by PL 1973, c. 458, §1, is further
24 amended to read:

25 **2. Bargaining agent.** "Bargaining agent" means any lawful organization,
26 association or individual representative of such an organization or association ~~which that~~
27 has as its primary purpose the representation of employees in their employment relations
28 with employers, ~~and which has been determined by the public employer or by the~~
29 ~~executive director of the board to be the choice of the majority of the unit as their~~
30 ~~representative.~~

31 **Sec. 4. 26 MRSA §966, sub-§3**, as enacted by PL 1975, c. 697, §2, is amended to
32 read:

33 **3. Unit clarification.** ~~Where there is a certified or currently recognized bargaining~~
34 ~~representative and where~~ When the circumstances surrounding the formation of an
35 existing bargaining unit are alleged to have changed sufficiently to warrant modification
36 in the composition of that bargaining unit, any public employer or any recognized ~~or~~
37 ~~certified~~ bargaining agent may file a petition for a unit clarification ~~provided that if~~
38 the parties are unable to agree on appropriate modifications ~~and there is no question~~
39 ~~concerning representation.~~

40 **Sec. 5. 26 MRSA §966, sub-§4**, as amended by PL 1993, c. 38, §1, is further
41 amended to read:

1 **4. Unit merger; same bargaining agent.** If there is the same certified or currently
2 ~~recognized bargaining representative of public employees in~~ are multiple bargaining units
3 with the same public employer, the public employer ~~or certified or recognized bargaining~~
4 ~~representative~~ may file a petition with the executive director to merge those bargaining
5 units. Upon the finding of the executive director or the director's designee that the
6 expanded unit would conform with the requirements set forth in this subsection, the
7 executive director shall order an election within each bargaining unit to determine
8 whether a majority of the employees voting in each bargaining unit wish to be within the
9 expanded unit. The only question on the ballot in a merger election is approval or
10 disapproval of the proposed merger. ~~The executive director or the director's designee~~
11 ~~shall certify the bargaining agent for an expanded unit consisting of any bargaining units~~
12 ~~in which a majority of the employees voting approved the merger.~~

13 A. ~~After an expanded unit is certified, the~~ The parties shall ~~then~~ bargain over
14 modifications needed in order to provide for the wages, hours and working conditions
15 or contract grievance arbitration for the newly included positions in any existing
16 collective bargaining agreement or any collective bargaining agreement being
17 negotiated.

18 When there is an unexpired collective bargaining agreement in the merged bargaining
19 unit with a different expiration date from any other collective bargaining agreement
20 in the merged bargaining unit, all contracts must be honored to their expiration dates
21 unless mutually agreed to otherwise by the public employer and the bargaining agent.
22 Collective bargaining agreements may be bargained on an interim basis in any
23 merged bargaining unit so that all collective bargaining agreements expire on the
24 same date.

25 ~~B. If a petition has been filed by a competing organization for decertification of the~~
26 ~~current bargaining agent for any of the bargaining units subject to the merger, then~~
27 ~~the decertification petition takes precedence over a petition to merge bargaining units.~~

28 C. A public employer ~~or certified or recognized bargaining representative~~ may not
29 file more than once a year with the executive director to merge or combine
30 bargaining units for the same bargaining unit.

31 D. The executive director or the director's designee conducting unit merger
32 proceedings may administer oaths and may require by subpoena the attendance and
33 testimony of witnesses, the production of books, records and other evidence relating
34 to the issues presented to the executive director or the director's designee.

35 E. A bargaining unit composed of a majority of supervisors may not merge under
36 this subsection with any other bargaining unit.

37 F. A bargaining unit composed of teachers may not merge under this subsection with
38 a bargaining unit of nonprofessional employees.

39 **Sec. 6. 26 MRSA §967**, as amended by PL 1991, c. 622, Pt. O, §7, is repealed.

40 **Sec. 7. 26 MRSA §968, sub-§4**, as amended by PL 1993, c. 90, §1, is further
41 amended to read:

1 **4. Review of representative proceedings.** Any party aggrieved by any ruling or
2 determination of the executive director, or the executive director's designee, under
3 ~~sections section 966 and 967~~ may appeal, within 15 days of the announcement of the
4 ruling or determination, ~~except that in the instance of objections to the conduct of an~~
5 ~~election or challenged ballots the time period is 5 working days,~~ to the Maine Labor
6 Relations Board.

7 Upon receipt of such an appeal, the board shall within a reasonable time hold a hearing
8 having first caused 7 days notice in writing of the time and place of the hearing to be
9 given to the aggrieved party, the labor ~~organizations~~ organization or bargaining agent and
10 the public employer. These hearings must be conducted in the manner provided in
11 subsection 5, paragraph B. Within a reasonable time after the conclusion of any hearing
12 the board shall make a written decision that must include findings of fact and either
13 affirm or modify the ruling or determination of the executive director and specify the
14 reasons for that action. A copy of that decision must be mailed to the labor organization
15 or bargaining agent or its attorney or other designated representative and the public
16 employer. Decisions of the board made pursuant to this subsection are subject to review
17 by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance
18 with the standards specified in section 972, ~~provided if~~ if the complaint is filed within 15
19 days of the date of issuance of the decision. The complaint must be served upon the
20 board and all parties to the board proceeding by certified mail, return receipt requested.

21 **Sec. 8. 26 MRSA §979-A, sub-§1,** as enacted by PL 1973, c. 774, is amended to
22 read:

23 **1. Bargaining agent.** "Bargaining agent" means any lawful organization,
24 association or individual representative of such an organization or association ~~which that~~
25 has as its primary purpose the representation of employees in their employment relations
26 with employers, ~~and which has been determined by the public employer as defined in~~
27 ~~subsection 5 or by the executive director of the board to be the choice of the majority of~~
28 ~~the unit as their representative.~~

29 **Sec. 9. 26 MRSA §979-E, sub-§3,** as enacted by PL 1975, c. 697, §9, is amended
30 to read:

31 **3. Unit clarification.** ~~Where there is a certified or currently recognized bargaining~~
32 ~~representative and where~~ When the circumstances surrounding the formation of an
33 existing bargaining unit are alleged to have changed sufficiently to warrant modification
34 in the composition of that bargaining unit, any public employer or any recognized ~~or~~
35 ~~certified~~ bargaining agent may file a petition for a unit clarification, ~~provided that if~~
36 the parties are unable to agree on appropriate modifications ~~and there is no question~~
37 ~~concerning representation.~~

38 **Sec. 10. 26 MRSA §979-F,** as amended by PL 1981, c. 277, is repealed.

39 **Sec. 11. 26 MRSA §979-G, sub-§2,** as amended by PL 1993, c. 90, §4, is further
40 amended to read:

1 **2. Review of representation proceedings.** Any person aggrieved by any ruling or
2 determination of the executive director under ~~sections~~ section 979-E and 979-F may
3 appeal, within 15 days of the announcement of the ruling or determination, ~~except that in~~
4 ~~the instance of objections to the conduct of an election or challenged ballots the time~~
5 ~~period is 5 working days~~, to the Maine Labor Relations Board. Upon receipt of such an
6 appeal, the board shall, within a reasonable time, hold a hearing, having first caused 7
7 days' notice in writing of the time and place of such hearing to be given to the aggrieved
8 party, the labor ~~organizations~~ organization or bargaining agent and the public employer.
9 The hearings and the procedures established in furtherance thereof must be in accordance
10 with section 968. Decisions of the board made pursuant to this subsection are subject to
11 review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in
12 accordance with the standards specified in section 972, if the complaint is filed within 15
13 days of the date of issuance of the decision. The complaint must be served upon the
14 board and all parties to the board proceeding by certified mail, return receipt requested.

15 **Sec. 12. 26 MRSA §1022, sub-§1-B,** as enacted by PL 1975, c. 671, §3, is
16 amended to read:

17 **1-B. Bargaining agent.** "Bargaining agent" means any lawful organization,
18 association or individual representative of such an organization or association, ~~which that~~
19 has as one of its primary purposes the representation of employees in their employment
20 relations with employers ~~and which has been certified by the Executive Director of the~~
21 ~~Maine Labor Relations Board.~~

22 **Sec. 13. 26 MRSA §1024-A, sub-§7,** as enacted by PL 1979, c. 541, Pt. B, §31,
23 is amended to read:

24 **7. Unit clarification.** ~~Where there is a certified or currently recognized bargaining~~
25 ~~representative and where~~ When the circumstances surrounding the formation of an
26 existing bargaining unit are alleged to have changed sufficiently to warrant modification
27 in the composition of that bargaining unit, any public employer or any recognized ~~or~~
28 ~~certified~~ bargaining agent may file a petition for a unit clarification, ~~provided that if~~
29 the parties are unable to agree on appropriate modifications ~~and there is no question~~
30 ~~concerning representation.~~

31 **Sec. 14. 26 MRSA §1025,** as amended by PL 2003, c. 20, Pt. OO, §2 and affected
32 by §4, is repealed.

33 **Sec. 15. 26 MRSA §1027, sub-§3,** as enacted by PL 1975, c. 603, §1, is repealed.

34 **Sec. 16. 26 MRSA §1028, sub-§2,** as amended by PL 2007, c. 695, Pt. C, §17, is
35 further amended to read:

36 **2. Review of representation proceedings.** Any person aggrieved by any ruling or
37 determination of the executive director under ~~sections~~ section 1024-A and 1025 may
38 appeal, within 15 days of the announcement of the ruling or determination, ~~except that in~~
39 ~~the instance of objections to the conduct of an election or challenged ballots the time~~
40 ~~period is 5 working days~~, to the Maine Labor Relations Board. Upon receipt of such an
41 appeal, the board shall within a reasonable time hold a hearing, having first caused 7

1 days' notice, in writing, of the time and place of the hearings to be given to the aggrieved
2 party, the labor ~~organizations~~ organization or bargaining agent and the public employer.
3 The hearings and the procedures established in furtherance thereof must be in accordance
4 with section 968. Decisions of the board made pursuant to this subsection are subject to
5 review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in
6 accordance with the standards specified in section 972, if the complaint is filed within 15
7 days of the date of issuance of the decision. The complaint must be served upon the
8 board and all parties to the board proceeding by certified mail, return receipt requested.

9 **Sec. 17. 26 MRSA c. 12-A** is enacted to read:

10 **CHAPTER 12-A**

11 **REPRESENTATION OF PUBLIC SECTOR LABOR CONTRACTS**

12 **§1039. Policy of State**

13 It is the public policy of this State that any contract or agreement entered into
14 between the State or any subdivision of the State, including, but not limited to, any
15 county, city, town, municipality or independent district, and a labor organization, under
16 the terms of which contract or agreement the labor organization is empowered, or
17 purports to be empowered, to represent any public employee who is not a voluntary
18 member of that labor organization is unlawful and is declared void.

19 **§1040. Annual determination of bargaining agent**

20 Notwithstanding any law to the contrary, a public employee bargaining unit formed
21 pursuant to this Title annually shall hold an election to determine or certify the bargaining
22 agent for that unit.

23 **Sec. 18. Application.** This Act does not affect the validity of any lawful contract
24 or agreement in existence on the effective date of this Act but does apply to any extension
25 or renewal of such a contract or agreement.

26 **SUMMARY**

27 This bill amends the State's labor laws to ensure that each public sector union
28 represents only those public employees who voluntarily are members of that union.

29 This bill also requires a public employee union annually to determine or certify the
30 bargaining agent for that union.