



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1221

S.P. 419

In Senate, March 26, 2013

An Act To Preserve the Dynamic Status Quo Pending Expiration of Collective Bargaining Agreements

Reference to the Committee on Labor, Commerce, Research and Economic Development 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 Senator CAIN of Penobscot.
Cosponsored by Representative GILBERT of Jay, Representative HERBIG of Belfast and
Senators: PATRICK of Oxford, SAVIELLO of Franklin, Representatives: CAMPBELL of
Newfield, FREY of Bangor, GRAHAM of North Yarmouth, HAMANN of South Portland,
MASON of Topsham, MASTRACCIO of Sanford.

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

2 **Sec. 1. 26 MRSA §965, sub-§1**, as amended by PL 2009, c. 107, §5, is further
3 amended to read:

4 **1. Negotiations.** It is the obligation of the public employer and the bargaining agent
5 to bargain collectively. "Collective bargaining" means, for the purposes of this chapter,
6 their mutual obligation:

7 A. To meet at reasonable times;

8 B. To meet within 10 days after receipt of written notice from the other party
9 requesting a meeting for collective bargaining purposes, as long as the parties have
10 not otherwise agreed in a prior written contract. This obligation is suspended during
11 the period between a referendum approving a new regional school unit and the
12 operational date of the regional school unit, as long as the parties meet at reasonable
13 times during that period;

14 C. To confer and negotiate in good faith with respect to wages, hours, working
15 conditions and contract grievance arbitration, except that by such obligation neither
16 party may be compelled to agree to a proposal or be required to make a concession
17 and except that public employers of teachers shall meet and consult but not negotiate
18 with respect to educational policies; for the purpose of this paragraph, educational
19 policies may not include wages, hours, working conditions or contract grievance
20 arbitration;

21 D. To execute in writing any agreements arrived at, the term of any such agreement
22 to be subject to negotiation but may not exceed 3 years; and

23 E. To participate in good faith in the mediation, fact-finding and arbitration
24 procedures required by this section.

25 Whenever wages, rates of pay or any other matter requiring appropriation of money by
26 any municipality or county are included as a matter of collective bargaining conducted
27 pursuant to this chapter, it is the obligation of the bargaining agent to serve written notice
28 of request for collective bargaining on the public employer at least 120 days before the
29 conclusion of the current fiscal operating budget, except that this requirement is waived
30 in the event that a bargaining agent of a newly formed bargaining unit is recognized or
31 certified during the period not more than 120 days nor less than 30 days prior to the end
32 of the fiscal period. The 120-day notice requirement is also waived with respect to
33 regional school units formed pursuant to Title 20-A, chapter 103-A, subchapter 2 prior to
34 their first year of operation.

35 When the established practice or the most recent collective bargaining agreement
36 provides for automatic periodic increases in pay or benefits, including, but not limited to,
37 increases based on length of service or merit, those increases must continue by virtue of
38 the dynamic status quo doctrine during negotiations until the execution of a new
39 agreement.

40 **Sec. 2. 26 MRSA §979-D, sub-§1**, as amended by PL 1997, c. 741, §6 and
41 affected by §12, is further amended to read:

1 **1. Negotiations.** On and after January 1, 1975, it ~~shall be~~ is the obligation of the
2 public employer and the bargaining agent to bargain collectively. "Collective bargaining"
3 means, for the purpose of this chapter, their mutual obligation:

4 A. To meet at reasonable times;

5 B. To meet within 10 days after receipt of written notice from the other party
6 requesting a meeting for collective bargaining purposes, ~~provided~~ as long as the
7 parties have not otherwise agreed in a prior written contract;

8 C. To execute in writing any agreements arrived at, the term of any such agreement
9 to be subject to negotiation but ~~shall~~ not to exceed 3 years;

10 D. To participate in good faith in the mediation, ~~fact-finding~~ fact-finding and
11 arbitration procedures required by this section; and

12 E. To confer and negotiate in good faith:

13 (1) To confer and negotiate in good faith with respect to wages, hours, working
14 conditions and contract grievance arbitration, except that by such obligation
15 neither party ~~shall~~ may be compelled to agree to a proposal or be required to
16 make a concession. All matters relating to the relationship between the employer
17 and employees ~~shall be~~ are the subject of collective bargaining, except those
18 matters ~~which~~ that are prescribed or controlled by public law. Such matters
19 appropriate for collective bargaining to the extent they are not prescribed or
20 controlled by public law include but are not limited to:

21 (a) Wage and salary schedules to the extent they are inconsistent with rates
22 prevailing in commerce and industry for comparable work within the State;

23 (b) Work schedules relating to assigned hours and days of the week;

24 (c) Use of vacation or sick leave, or both;

25 (d) General working conditions;

26 (e) Overtime practices;

27 (f) Rules for personnel administration, except the following: ~~Rules~~ rules
28 relating to applicants for employment in state or legislative service and state
29 classified employees in an initial probationary status, including any
30 extensions thereof, ~~provided~~ as long as such rules are not discriminatory by
31 reason of an applicant's race, color, creed, sex or national origin;

32 (g) Compensation system for state and legislative employees, which is
33 defined as:

34 (i) Guide charts, if any, and job evaluation factors, including factor
35 language and factor weights, used to evaluate jobs for pay purposes;

36 (ii) Job point to pay grade conversion tables;

37 (iii) The number of and spread between pay steps within pay grades;

38 (iv) The number of and spread between pay grades within the system;
39 and

- 1 (v) Temporary payment of recruitment and retention stipends, ~~provided~~
2 as long as the stipends are allowed under Civil Service Law;
- 3 (h) The nature of and procedures governing appeals of the allocation or
4 reallocation of job classifications to pay grades resulting from any revisions
5 to the compensation system; and
- 6 (i) Implementation of any revisions to the compensation system.
- 7 (2) Subparagraph (1), ~~shall~~ may not be construed to be in derogation of or
8 contravene the spirit and intent of the merit system principles and personnel laws.
- 9 (3) Cost items ~~shall~~ must be submitted for inclusion in the Governor's next
10 operating budget within 10 days after the date on which the agreement is ratified
11 by the parties. If the Legislature rejects any of the cost items submitted to it, all
12 cost items submitted ~~shall~~ must be returned to the parties for further bargaining.
13 Cost items related to a collective bargaining agreement reached under this
14 chapter and submitted to the Legislature for its approval under this subparagraph
15 ~~shall~~ may not be submitted in the same legislation that contains cost items for
16 employees exempted from the definition of "state employee" under section 979-
17 A, subsection 6, and employees of the legislative branch, except that cost items
18 for those employees exempted under section 979-A, subsection 6, paragraphs E
19 and F, need not be excluded.
- 20 (4) Collective bargaining over the subjects described in subparagraph (1),
21 divisions (g), (h) and (i); is subject to the following.
 - 22 (a) Subparagraph (1), division (g), ~~shall~~ may not be construed to authorize
23 any more than one system for evaluating jobs of state employees in
24 bargaining units recognized under this chapter.
 - 25 (b) Either the public employer or the bargaining agents may compel the
26 other party to bargain collectively over the subjects described in
27 subparagraph (1), divisions (g), (h) and (i), ~~provided~~ except that bargaining
28 over those subjects may not be compelled by either the public employer or
29 the bargaining agents sooner than 10 years after the parties' last agreement to
30 revise the compensation system made pursuant to a demand to bargain.
 - 31 (c) During the periods of time described in division (b), when the subjects
32 described in subparagraph (1), divisions (g), (h) and (i), are not mandatory
33 subjects of bargaining, they ~~shall be~~ are permissive subjects of bargaining.
 - 34 (d) Bargaining over the subjects described in subparagraph (1), divisions (g),
35 (h) and (i), ~~shall~~ must be conducted separately and apart from bargaining
36 with individual bargaining agents over all other negotiable subjects and ~~shall~~
37 must be conducted within a committee composed of representatives of
38 management and of the bargaining units recognized under this chapter.
 - 39 (e) The labor representatives on the committee ~~shall~~ must consist of equal
40 numbers of representatives from each of the bargaining units recognized
41 under this chapter. Each bargaining unit ~~shall have~~ has one vote, regardless
42 of the number of representatives, on any matter addressed by the committee.
43 The labor position on any matter addressed by the committee ~~shall~~ must be

1 established by majority vote of the units recognized under this chapter. A
2 majority vote of the units is necessary to initiate bargaining over the matters
3 described in subparagraph (1), divisions (g), (h) and (i).

4 (f) Notwithstanding the time frame provided in subparagraph (3), cost items
5 resulting from revisions to the compensation system may only be submitted
6 to the Legislature for funding after all appeals from the allocation or
7 reallocation of job classifications under the revised system have been finally
8 decided. The cost items relating to an individual bargaining unit ~~shall~~ must
9 be submitted to the Legislature for funding as part of the next legislation
10 submitted pursuant to subparagraph (3) to fund a collective bargaining
11 agreement between the State and that bargaining unit.

12 (g) Bargaining over the subjects described in subparagraph (1), divisions (g),
13 (h) and (i), ~~shall be~~ is subject to the dispute resolution procedures of
14 subsections 2, 3 and 4. For purposes of subsection 4, paragraph D,
15 controversies over the subjects described in subparagraph (1), divisions (g),
16 (h) and (i), ~~shall be~~ are deemed "controversies over salaries."

17 (5) Nothing in this chapter may be construed to exclude from the scope of
18 collective bargaining the subjects described in subparagraph (1), divisions (g), (h)
19 and (i).

20 When the established practice or the most recent collective bargaining agreement
21 provides for automatic periodic increases in pay or benefits, including, but not limited to,
22 increases based on length of service or merit, those increases must continue by virtue of
23 the dynamic status quo doctrine during negotiations until the execution of a new
24 agreement.

25 **Sec. 3. 26 MRSA §1026, sub-§1**, as amended by PL 1993, c. 84, §1 and PL 2003,
26 c. 20, Pt. OO, §2 and affected by §4, is further amended to read:

27 **1. Negotiations.** It is the obligation of the university, academy, community college
28 or state schools for practical nursing and the bargaining agent to bargain collectively.
29 "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

- 30 A. To meet at reasonable times;
- 31 B. To meet within 10 days after receipt of written notice from the other party
32 requesting a meeting for collective bargaining purposes if the parties have not
33 otherwise agreed in a prior written contract;
- 34 C. To confer and negotiate in good faith with respect to wages, hours, working
35 conditions and contract grievance arbitration, except that by such obligation neither
36 party is compelled to agree to a proposal or required to make a concession;
- 37 D. To execute in writing any agreements arrived at, the term of any such agreement
38 to be subject to negotiation, but not to exceed 3 years; and
- 39 E. To participate in good faith in the mediation, ~~fact-finding~~ fact-finding and
40 arbitration procedures required by this section.

1 When the established practice or the most recent collective bargaining agreement
2 provides for automatic periodic increases in pay or benefits, including, but not limited to,
3 increases based on length of service or merit, those increases must continue by virtue of
4 the dynamic status quo doctrine during negotiations until the execution of a new
5 agreement.

6 **Sec. 4. 26 MRSA §1285, sub-§1**, as amended by PL 1989, c. 596, Pt. N, §6, is
7 further amended to read:

8 **1. Negotiations.** On and after the effective date of this chapter, it ~~shall be~~ is the
9 obligation of the public employer and the bargaining agent to bargain collectively.
10 "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

11 A. To meet at reasonable times;

12 B. To meet within 10 days after receipt of written notice from the other party
13 requesting a meeting for collective bargaining purposes, ~~provided that~~ as long as the
14 parties have not otherwise agreed in a prior written contract;

15 C. To execute in writing any agreements arrived at, the term of any such agreement
16 to be subject to negotiation ~~shall~~ but not to exceed 2 years; and

17 D. To participate in good faith in the mediation, ~~fact finding~~ fact-finding, arbitration
18 and mediation-arbitration procedures required by this section;

19 E. To confer and negotiate in good faith with respect to wages, hours, working
20 conditions and contract grievance arbitration, except that by such obligation neither
21 party may be compelled to agree to a proposal or be required to make a concession.
22 All matters relating to the relationship between the employer and employees ~~shall be~~
23 are the subject of collective bargaining, except those matters ~~which that~~ that are
24 prescribed or controlled by law. Such matters appropriate for collective bargaining, to
25 the extent they are not prescribed or controlled by law, include, but are not limited to:

26 (1) Wage and salary schedules to the extent they are inconsistent with rates
27 prevailing in commerce and industry for comparable work within the State;

28 (2) Work schedules relating to assigned hours and days of the week;

29 (3) Use of vacation or sick leave, or both;

30 (4) General working conditions;

31 (5) Overtime practices; and

32 (6) Rules for personnel administration, except for rules relating to applicants for
33 employment and employees in an initial probationary status, including any
34 extensions thereof, ~~provided that~~ as long as the rules are not discriminatory by
35 reason of an applicant's race, color, creed, sex or national origin.

36 Cost items ~~shall~~ must be included in the Judicial Department's next operating budget
37 in accordance with Title 4, section 24. If the Legislature rejects any of the cost items
38 submitted to it, all cost items submitted ~~shall~~ must be returned to the parties for
39 further bargaining. Cost items related to a collective bargaining agreement reached
40 under this chapter and submitted to the Legislature for its approval under this

1 subsection ~~shall~~ may not be submitted in the same legislation that contains cost items
2 for employees exempted from the definition of "judicial employee" under section
3 1282, subsection 5, except that cost items for employees exempted under section
4 1282, subsection 5, paragraphs F and G, need not be excluded.

5 When the established practice or the most recent collective bargaining agreement
6 provides for automatic periodic increases in pay or benefits, including, but not limited to,
7 increases based on length of service or merit, those increases must continue by virtue of
8 the dynamic status quo doctrine during negotiations until the execution of a new
9 agreement.

10 **SUMMARY**

11 This bill amends the municipal public employees labor relations laws, the state
12 employees labor relations laws, the University of Maine System labor relations laws and
13 the judicial employees labor relations laws to specify that the provision, either as practice
14 or part of the most recent collective bargaining agreement, of increases in pay or benefits,
15 based on length of service or merit, must be continued during negotiations of a new
16 agreement by virtue of the doctrine of dynamic status quo.