

§1958-B. Dispute resolution

1. Voluntary mediation. At any time prior to the commencement of required mediation under subsection 2, a handler and a qualified association may mutually agree to obtain or may unilaterally obtain the services of a mediator. Regardless whether mediation is sought mutually or unilaterally, both parties shall participate in mediation in good faith. The parties must use the services of the State's Panel of Mediators for mediation and must share all costs of mediation equally. Costs of mediation and any applicable state cost allocation program charges must be paid into a special fund administered by the Maine Labor Relations Board. The Executive Director of the Maine Labor Relations Board shall authorize mediation services and expenditures incurred by members of the panel. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. Voluntary mediation may not last for more than 3 days for annual crops; voluntary mediation for all other commodities may not last more than 5 days. Mediation may be extended by mutual agreement by the bargaining parties.

[PL 1991, c. 798, §1 (AMD).]

2. Required mediation. Any matters remaining in dispute between the handler and a qualified association 30 days prior to the contract date, as defined in subsection 4, must be submitted by the parties to required mediation. No later than 30 days prior to the contract date, the parties must have mutually agreed on a mediator and on sharing the costs of mediation or must have notified the board that the services of the State's Panel of Mediators will be needed. If services of the State's Panel of Mediators are used, the parties shall share all costs of mediation equally. Mediation may not continue for more than 3 consecutive business days for annual crops; all other commodities may not last more than 5 days, unless the mediator earlier declares that resolution by mediation is not possible. Mediation may be extended by mutual agreement by the bargaining parties. At the end of the mediation period or upon the mediator's earlier declaration, the mediator shall promptly prepare a report specifying all agreements reached in mediation and recommending that the parties either resume bargaining as to all matters remaining in dispute for a period of time not to exceed 2 days or that the parties submit all matters remaining in dispute to arbitration. The parties shall proceed according to the mediator's recommendation. If the parties are to resume bargaining, that bargaining must commence on the day after the day on which the mediator makes the recommendation. Any matters remaining in dispute at the end of the specified bargaining period must be submitted to arbitration.

[PL 2003, c. 329, §5 (AMD).]

3. Different contract date. Once a contract date has been established as provided in subsection 2, the parties may mutually agree to a different contract date, provided that they do so no less than 45 days prior to the contract date established as provided in subsection 4.

[PL 1987, c. 155, §15 (NEW).]

4. Definition. The term "contract date" as used in subsection 2, shall have the following meaning.

A. Where, on the effective date of this section, there is no contract under this article in existence between the parties, the contract date shall be the date set by the board, in consultation with the parties, as the date by which a contract must be signed by both parties. After that date, as between those parties, the contract date shall be the anniversary of the date set by the board initially. [PL 1987, c. 155, §15 (NEW).]

B. Where, on the effective date of this section, a contract under this article exists between the parties, the contract date shall be the anniversary of the date upon which that contract was signed by both parties. [PL 1987, c. 155, §15 (NEW).]

[PL 1987, c. 155, §15 (NEW).]

5. Arbitration. The parties shall notify the board and the Commissioner of Agriculture, Conservation and Forestry at the commencement of required mediation and an arbitrator must be selected as provided in paragraph D. One day after the mediator recommends arbitration or one day after the conclusion of the period of further bargaining, as provided in subsection 2, each party shall submit to the arbitrator its final offer in which it shall identify all matters as to which the parties agree with contractual language setting forth these agreements, and all matters as to which the parties do not agree with contractual language setting forth the party's final offer for resolution of those disagreements.

A. For all matters submitted to arbitration, the arbitrator shall choose between the final offers of the parties. If the parties reach an agreement on the matters under arbitration before the arbitrator issues a decision, they may submit a joint final offer that the arbitrator shall accept and render as the decision. The arbitrator may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records. A person who fails to obey the subpoena of an arbitrator may be punished for contempt of court on application by the arbitrator to the Superior Court for the county in which the failure occurs. The arbitrator may utilize other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision within 10 days of the commencement of arbitration and that decision shall be binding on the parties. If the parties reach an agreement on the matters in the arbitrator's decision prior to signing the contract, they may submit a joint final offer to the arbitrator. The arbitrator shall rescind the previous decision and accept and render the joint final offer as the decision. [PL 1989, c. 703, §2 (RPR).]

B. Within 5 days of the arbitrator's decision, the board shall prepare a contract which must include all terms agreed to by the parties in bargaining or settled by voluntary or required mediation or by arbitration and must present the contract to the parties who shall sign the contract within 2 days of its presentation. [PL 1989, c. 703, §2 (RPR).]

C. The commissioner, in consultation with the board, shall establish a panel of arbitrators, who must be qualified by education, training or experience to carry out the responsibilities of an arbitrator under this article. [PL 1989, c. 703, §2 (RPR).]

D. Upon notification by the parties as provided in this subsection, the commissioner shall submit to the parties a list containing an odd number of names of members of the panel of arbitrators who are available for the specific pending arbitration and have expressed a willingness to serve. The parties shall alternately strike names from the list until a single name is left, who shall serve as the arbitrator. The order of striking names must be determined by chance. [PL 2003, c. 329, §6 (AMD).]

E. All costs of arbitration must be borne equally by the parties. The arbitrator shall submit a statement of charges and expenses to the parties and to the board. Each party shall pay the arbitrator directly. [PL 1989, c. 703, §2 (RPR).]

[PL 2003, c. 329, §6 (AMD); PL 2011, c. 657, Pt. W, §6 (REV).]

5-A. Criteria for arbitrator decisions. The arbitrator shall consider the following factors in making a decision pursuant to subsection 5:

- A. Prices or projected prices for the agricultural commodity paid by competing handlers in the market area or competing market areas; [PL 1989, c. 703, §3 (NEW).]
- B. The quantity of the commodity produced or projections of production in the production area or competing market areas; [PL 1989, c. 703, §3 (NEW).]
- C. The relationship between the quantity produced and the quantity handled by the handler; [PL 1989, c. 703, §3 (NEW).]
- D. The producer's costs of production including the cost that would be involved in paying labor a fair wage rate; [PL 2019, c. 248, §5 (AMD).]
- E. The average consumer prices for goods and services, commonly known as the cost of living; [PL 1989, c. 703, §3 (NEW).]
- F. The impact of the award on the competitive position of the handler in the market area or competing market areas; [PL 1989, c. 703, §3 (NEW).]
- G. The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities; [PL 1989, c. 703, §3 (NEW).]
- H. A fair return on investment; [PL 1989, c. 703, §3 (NEW).]
- I. The kind, quality or grade of the commodity involved; [PL 1989, c. 703, §3 (NEW).]
- J. Prior agreements of the parties; and [PL 1989, c. 703, §3 (NEW).]
- K. Other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved. [PL 1989, c. 703, §3 (NEW).]
[PL 2019, c. 248, §5 (AMD).]

6. Violation. Failure by a party to comply with any of the requirements of this section is a violation of this article.
[PL 1987, c. 155, §15 (NEW).]

SECTION HISTORY

PL 1987, c. 155, §15 (NEW). PL 1989, c. 201, §§1,2 (AMD). PL 1989, c. 703, §§2,3 (AMD). PL 1991, c. 622, §O1 (AMD). PL 1991, c. 798, §1 (AMD). PL 2003, c. 329, §§5,6 (AMD). PL 2011, c. 657, Pt. W, §6 (REV). PL 2019, c. 248, §5 (AMD).

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