

## §1026. Obligation to bargain

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

- A. To meet at reasonable times; [PL 1989, c. 878, Pt. A, §71 (RPR).]
  - B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes if the parties have not otherwise agreed in a prior written contract; [PL 1993, c. 84, §1 (AMD).]
  - C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party is compelled to agree to a proposal or required to make a concession; [PL 1993, c. 84, §1 (AMD).]
  - D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation, but not to exceed 3 years; and [PL 1989, c. 878, Pt. A, §71 (RPR).]
  - E. To participate in good faith in the mediation, fact finding and arbitration procedures required by this section. [PL 1989, c. 878, Pt. A, §71 (RPR).]
- [PL 1993, c. 84, §1 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

**1-A. Additional bargaining; community college employees.** Cost items in any collective bargaining agreement of community college employees must be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, all cost items submitted must be returned to the parties for further bargaining. "Cost items" includes salaries, pensions and insurance.

Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subsection may not be submitted in the same legislation that contains cost items for employees exempted from the definition of "community college employee" under section 1022, subsection 11.

[PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF); PL 2003, c. 76, §2 (AMD); PL 2003, c. 76, §4 (AFF).]

## 2. Mediation.

- A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and employees or their representatives through mediation. [PL 1975, c. 603, §1 (NEW).]
- B. Mediation procedures, as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Maine Labor Relations Board or its executive director. [PL 1975, c. 671, §12 (AMD).]
- C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions. [PL 1975, c. 671, §12 (AMD).]
- D. Nothing in this section shall be construed as preventing the parties, as an alternative to mediation under section 965, from jointly agreeing to elect mediation from either the Federal Mediation and Conciliation Service or the American Arbitration Association, in accordance with the procedures, rules and regulations of those organizations. [PL 1975, c. 603, §1 (NEW).]

E. Any information disclosed by either party to a dispute to a mediator or to a mediation panel or any of its members in the performance of this subsection shall be privileged. [PL 1975, c. 603, §1 (NEW).]

[PL 1975, c. 671, §12 (AMD).]

### **3. Fact-finding.**

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Labor Relations Board to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and Conciliation, or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations. [PL 1975, c. 671, §13 (AMD).]

B. If the parties do not jointly agree to call upon the Maine Labor Relations Board or to pursue some other procedure, either party to the controversy may request the executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making such appointments. [PL 1975, c. 671, §13 (AMD).]

C. The fact-finding proceedings shall be as provided by section 965, subsection 3. [PL 1975, c. 603, §1 (NEW).]

[PL 1975, c. 671, §13 (AMD).]

### **4. Arbitration.**

A. At any time after participating in the procedures set forth in subsections 2 and 3, either party, or the parties jointly, may petition the board to initiate arbitration procedures. On receipt of the petition, the executive director shall within a reasonable time determine if an impasse has been reached; the determination must be made administratively, with or without hearing, and is not subject to appeal. If the executive director so determines, the executive director shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties, within 10 days after the issuance of the order, have not selected an arbitrator or a Board of Arbitration, the executive director shall then order each party to select one arbitrator and the 2 arbitrators so selected shall select a 3rd neutral arbitrator. If the 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the executive director shall submit identical lists to the parties of 5 or more qualified arbitrators of recognized experience and competence. Each party has 7 days from the submission of the list to delete any names objected to, number the remaining names indicating the order of preference and return the list to the executive director. In the event a party does not return the list within the time specified, all parties named therein are deemed acceptable. From the arbitrators who have been approved by both parties and pursuant to the order of mutual preference, the executive director shall appoint a neutral arbitrator. If the parties fail to agree upon any arbitrators named, or if for any other reason the appointment cannot be made from the initial list, the executive director shall then submit a 2nd list of 5 or more additional qualified arbitrators of recognized experience and competence from which they shall strike names with the determination as to which party shall strike first being determined by a random technique administered through the Executive Director of the Maine Labor Relations Board. Thereafter, the parties shall alternately strike names from the list of names submitted, provided that, when the list is reduced to 4 names, the 2nd from the last party to strike shall be entitled to strike 2 names simultaneously, after which the last party to strike shall so strike one name from the then 2 remaining names, such that the then remaining name shall identify the person who must then be appointed by the executive director as the neutral arbitrator.

Nothing in this subsection may be construed as preventing the parties, as an alternative to procedures in the preceding paragraph, from jointly agreeing to elect arbitration from either the

Federal Mediation and Conciliation Service or the American Arbitration Association, under the procedures, rules and regulations of that association, provided that these procedures, rules and regulations are not inconsistent with paragraphs B and C. [RR 2009, c. 2, §76 (COR).]

B. If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: With respect to a controversy over salaries, pensions and insurance, the arbitrators will recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within 60 days after the selection of the neutral arbitrator. The arbitrators may in their discretion make such recommendations and findings public, and either party may make such recommendations and findings public if agreement is not reached with respect to such findings and recommendations within 10 days after their receipt from the arbitrators. With respect to a controversy over subjects other than salaries, pensions and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within 60 days after the selection of the neutral arbitrator. Such determinations may be made public by the arbitrators or either party and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations, and such determinations will be subject to review by the Superior Court in the manner specified by section 1033. The results of all arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration proceeding, the arbitrator or the chairman of the arbitration panel will submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated. [PL 1983, c. 153, §2 (AMD).]

C. In reaching a decision under this section, the arbitrators shall consider the following factors:

- (1) The interests and welfare of the students and the public and the financial ability of the university, academy or community colleges to finance the cost items proposed by each party to the impasse;
- (2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the wages, hours and working conditions of other employees performing similar services in public and private employment competing in the same labor market;
- (3) The overall compensation presently received by the employees, including direct salary and wage compensation, vacation, holidays, life and health insurance, retirement and all other benefits received;
- (4) Such other factors not confined to the factors set out in subparagraphs (1) to (3), which are normally and traditionally taken into consideration in the resolution of disputes involving similar subjects of collective bargaining in public higher education;
- (5) The need of the university, academy or community colleges for qualified employees;
- (6) Conditions of employment in similar occupations outside the university, academy or community colleges;
- (7) The need to maintain appropriate relationships between different occupations in the university, academy or community colleges; and
- (8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities. [PL 1989, c. 443, §70 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

[RR 2009, c. 2, §76 (COR).]

**5. Costs.** The following costs must be shared equally by the parties to the proceedings: the costs of the fact-finding board, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the neutral arbitrator or arbitrators, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the Federal Mediation and Conciliation Service or the American Arbitration Association; and the costs of hiring the premises where any fact-finding or arbitration proceedings are conducted. All other costs must be assumed by the party incurring them. The services of the Panel of Mediators and the State Board of Arbitration and Conciliation and any state allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the Panel of Mediators and the State Board of Arbitration and Conciliation is the responsibility of the executive director. 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 matter is scheduled for hearing or 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.

[PL 1991, c. 798, §7 (AMD).]

#### SECTION HISTORY

PL 1975, c. 564, §38 (AMD). PL 1975, c. 603, §1 (NEW). PL 1975, c. 671, §§11-16 (AMD). PL 1975, c. 717, §7 (AMD). PL 1977, c. 581, §§10-13 (AMD). PL 1979, c. 501, §4 (AMD). PL 1983, c. 127 (AMD). PL 1983, c. 153, §§1,2 (AMD). PL 1985, c. 6 (AMD). PL 1985, c. 497, §§11,12 (AMD). PL 1985, c. 506, §§B26,27 (AMD). PL 1985, c. 737, §§A65,66 (AMD). PL 1989, c. 443, §§69,70 (AMD). PL 1989, c. 596, §N5 (AMD). PL 1989, c. 878, §A71 (AMD). PL 1991, c. 622, §O11 (AMD). PL 1991, c. 798, §7 (AMD). PL 1993, c. 84, §1 (AMD). PL 1999, c. 16, §F1 (AMD). PL 2001, c. 559, §JJ1 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 76, §2 (AMD). PL 2003, c. 76, §4 (AFF). RR 2009, c. 2, §76 (COR).

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