

§979-H. Prevention of prohibited acts

1. The board is empowered, as provided, to prevent any person, the public employer, any state employee, any legislative employee, any employee organization or any bargaining agent from engaging in any of the prohibited acts enumerated in section 979-C. This power may not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. [PL 1997, c. 741, §8 (AMD); PL 1997, c. 741, §12 (AFF).]

2. The public employer, any state employee, any legislative employee, any employee organization or any bargaining agent that believes that any person, the public employer, any state employee, any legislative employee, any employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. A complaint may not be filed with the executive director until the complaining party has served a copy thereof upon the party complained of. Upon receipt of such complaint, the executive director or the executive director's designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge must be dismissed by the executive director, subject to review by the board. If a formal hearing is considered necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board. The notice must designate the time and place of hearing for the prehearing conference or the hearing, as appropriate, provided that no hearing may be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of may file a written answer to the complaint and may appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in that proceeding and to present testimony. This subsection does not restrict the right of the board to require the executive director or the executive director's designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as the executive director or the executive director's designee considers appropriate, subject to review by the board.

[PL 1997, c. 741, §9 (AMD); PL 1997, c. 741, §12 (AFF).]

3. After hearing and argument, if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon such party an order requiring such party to cease and desist from such prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

[PL 1975, c. 623, §39 (AMD).]

4. After hearing and argument, if, upon a preponderance of the evidence received, the board shall not be of the opinion that the party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue an order dismissing said complaint.

[PL 1973, c. 774 (NEW).]

5. If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, said party fails to comply with the order of the board, then the party in whose favor the order operates or the board may file a civil action in the Superior Court in Kennebec

County, to compel compliance with the order of the board. In such action to compel compliance, the Superior Court shall not review the action of the board other than to determine questions of law. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

[PL 1975, c. 612, §4 (AMD).]

6. Whenever a complaint is filed with the executive director of the board, alleging that the public employer has violated section 979-C, subsection 1, paragraph F or alleging that a state employee, a legislative employee or employee organization or bargaining agent has violated section 979-C, subsection 2, paragraph C, the party making the complaint may simultaneously seek injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to such matter.

[PL 1997, c. 741, §10 (AMD); PL 1997, c. 741, §12 (AFF).]

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing and shall cause all interested parties and the board to be notified. The hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision or order is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

[PL 2011, c. 559, Pt. A, §27 (AMD).]

8. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply, except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction.

[PL 1973, c. 774 (NEW).]

SECTION HISTORY

PL 1973, c. 774 (NEW). PL 1975, c. 564, §36 (AMD). PL 1975, c. 612, §4 (AMD). PL 1975, c. 623, §39 (AMD). PL 1975, c. 697, §§11,12 (AMD). PL 1991, c. 143, §5 (AMD). PL 1993, c. 90, §5 (AMD). PL 1997, c. 741, §§8-10 (AMD). PL 1997, c. 741, §12 (AFF). PL 2011, c. 559, Pt. A, §27 (AMD).

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