§1285. Obligation to bargain; methods of resolving disputes

1. Negotiations. On and after the effective date of this chapter, it shall be the obligation of the public employer 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 1983, c. 702 (NEW).]

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided that the parties have not otherwise agreed in a prior written contract; [PL 1983, c. 702 (NEW).]

C. To execute in writing an agreement between the public employer and the bargaining agent. An agreement under this paragraph is subject to negotiation and may not exceed 2 years; [PL 2023, c. 405, Pt. A, §101 (RPR).]

D. To participate in good faith in the mediation, fact finding, arbitration and mediation-arbitration procedures required by this section; and [RR 2021, c. 2, Pt. A, §94 (COR).]

E. 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 may be compelled to agree to a proposal or be required to make a concession. All matters relating to the relationship between the employer and employees are the subject of collective bargaining, except those matters that are prescribed or controlled by law. Such matters appropriate for collective bargaining, to the extent they are not prescribed or controlled by law, include, but are not limited to:

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

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

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

(4) General working conditions;

(5) Overtime practices; and

(6) Rules for personnel administration, except for rules relating to applicants for employment and employees in an initial probationary status, including any extensions thereof, as long as the rules are not discriminatory by reason of an applicant's actual or perceived race, color, sex, sexual orientation, gender identity, physical or mental disability, religion, ancestry or national origin, age or familial status.

Cost items must be included in the Judicial Department's next operating budget in accordance with Title 4, section 24. 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 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 "judicial employee" under section 1282, subsection 5, except that cost items for employees exempted under section 1282, subsection 5, paragraph F need not be excluded. [PL 2021, c. 553, §19 (AMD); PL 2021, c. 601, §10 (AMD).]

[PL 2023, c. 405, Pt. A, §101 (AMD).]

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 and other disputes subject to settlement through mediation. [PL 1983, c. 702 (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 1983, c. 702 (NEW).]

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 1983, c. 702 (NEW).]

D. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged. [PL 1983, c. 702 (NEW).]

[PL 1983, c. 702 (NEW).]

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 agree either to call upon the Maine Labor Relations Board for fact-finding services with recommendations 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 and rules. [PL 1983, c. 702 (NEW).]

B. 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 the appointment. Any person who has actively participated as the mediator in the immediate proceedings for which fact-finding has been called shall not sit on that fact-finding panel. The panel shall hear the contending parties to the controversy. It may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Bureau of Labor Standards, and may administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to them. The members of the fact-finding panel shall submit their findings and recommendations only to the parties and to the Executive Director of the Maine Labor Relations Board. [PL 1983, c. 702 (NEW).]

C. The parties shall have a period of 30 days, after the submission of findings and recommendations from the fact finders, in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of the period, either party or the executive director may, but not until the end of the period unless the parties otherwise agree, make the fact-finding and recommendations public. [PL 1983, c. 702 (NEW).]

[PL 1983, c. 702 (NEW).]

4. Arbitration.

A. In addition to the 30-day period referred to in subsection 3, the parties shall have 15 more days, making a total of 45 days from the submission of findings and recommendations, in which to make a good faith effort to resolve their controversy. [PL 1983, c. 702 (NEW).]

B. If the parties have not resolved their controversy by the end of that 45-day period, either party may petition the board to initiate compulsory final and binding arbitration of the negotiations' impasse. On receipt of the petition, the executive director of the board shall investigate to determine if an impasse has been reached. If he so determines, he 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 an arbitration panel, the board shall then order each party to select one arbitrator and, if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the board shall submit a list from which the parties may alternately strike names

until a single name is left, who shall be appointed by the board as arbitrator. In reaching a decision under this paragraph, the arbitrator shall consider the following factors:

(1) The interests and welfare of the public and the financial ability of State Government 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 the executive and legislative branches of government and in public and private employment in other jurisdictions competing in the same labor market;

(3) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

(4) Such other factors not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment, including the average Consumer Price Index;

(5) The need of the Judicial Department for qualified employees;

(6) Conditions of employment in similar occupations outside State Government;

(7) The need to maintain appropriate relationships between different occupations in the Judicial Department; and

(8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities. [PL 1983, c. 702 (NEW).]

With respect to controversies over salaries, pensions and insurance, the arbitrator shall recommend terms of settlement and may make findings of fact. The recommendations and findings shall be advisory and shall not be binding upon the parties. The determination by the arbitrator on all other issues shall be final and binding on the parties.

Any hearing shall be informal and the rules of evidence for judicial proceedings shall not be binding. Any documentary evidence and other information deemed relevant by the arbitrator may be received in evidence. The arbitrator may administer oaths and require by subpoena attendance and testimony of witnesses and production of books and records and other evidence relating to the issues presented. The arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless that time limitation is extended by the executive director. [PL 1983, c. 702 (NEW).]

5. Mediation-arbitration.

A. The parties may agree in advance to a mediation-arbitration procedure. [PL 1983, c. 702 (NEW).]

B. The parties may jointly select a mediator- arbitrator. If they are unable to agree, either party may request the Executive Director of the Maine Labor Relations Board to select a mediator-arbitrator from a panel of mediators or from the State Board of Arbitration and Conciliation. The executive director may not select a person who has served as a mediator at an earlier stage of the same proceedings. [PL 1983, c. 702 (NEW).]

C. The mediator-arbitrator shall encourage the parties to reach a voluntary settlement of their dispute, but may, after a reasonable period of mediation as he may determine, initiate an arbitration

proceeding by notifying the parties of his intention to serve as a single arbitrator. [PL 1983, c. 702 (NEW).]

D. Any hearing shall be informal and the rules of evidence for judicial proceedings shall not be binding. Any documentary evidence and other information deemed relevant by the mediator-arbitrator may be received in evidence. The mediator-arbitrator shall have the power to administer oaths and to require by subpoena attendance and testimony of witnesses and production of books and records and other evidence relating to the issues presented. [PL 1983, c. 702 (NEW).]

E. In reaching a decision, the mediator-arbitrator shall consider the factors specified in section 1285, subsection 4. With respect to controversies over salaries, pensions and insurance, the mediator-arbitrator shall recommend terms of settlement and may make findings of fact. Such recommendations and findings shall be advisory and shall not be binding on the parties. The determination of the mediator-arbitrator on all other issues shall be final and binding on the parties. [PL 1983, c. 702 (NEW).]

F. The mediator-arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless the period is extended by the executive director. [PL 1983, c. 702 (NEW).]

[PL 1983, c. 702 (NEW).]

6. Reports of arbitration. The results of all arbitration and mediation-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 submissions of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration or mediation-arbitration proceeding, the arbitrator, the chairman of the arbitration panel or the mediator-arbitrator shall submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the proceeding has terminated.
[PL 1983, c. 702 (NEW).]

7. Costs. The costs for the services of the mediator, the members of the fact-finding board, the neutral arbitrator and the mediator-arbitrator, including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding, arbitration or mediation-arbitration proceedings are conducted, must be shared equally by the parties to the proceedings. All other costs must be assumed by the party incurring them.
[PL 1991, c. 622, Pt. O, §12 (AMD).]

8. Arbitration administration. The cost of services rendered and expenses incurred by the State Board of Arbitration and Conciliation, as defined in section 931, and any applicable state cost 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 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. 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, §8 (AMD).]

SECTION HISTORY

PL 1983, c. 702 (NEW). PL 1989, c. 502, §A111 (AMD). PL 1989, c. 596, §N6 (AMD). PL 1991, c. 622, §§O12,13 (AMD). PL 1991, c. 798, §8 (AMD). PL 2021, c. 553, §19 (AMD). PL 2021, c. 601, §10 (AMD). RR 2021, c. 2, Pt. A, §§93, 94 (COR). PL 2023, c. 405, Pt. A, §101 (AMD).