

12 DEPARTMENT OF LABOR

180 MAINE LABOR RELATIONS BOARD

Chapter 13: RESOLUTION OF CONTRACT NEGOTIATION DISPUTES

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**SUMMARY:** This chapter contains rules on requesting mediation, fact-finding, and arbitration and rules governing certain aspects of those proceedings.

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## MEDIATION

### § 1. Who May Request Mediation and When.

Traditional mediation services may be requested by either the bargaining agent or the public employer at any time during the bargaining process prior to interest arbitration.

### § 2. Requests for Mediation Services.

A party requesting mediation assistance in negotiations for an initial or successor agreement shall provide the information specified in this rule to the Board. This information may be supplied on a form available from the Board.

1. Name and Address of Requesting Party. The name of the person making the request and the name, address and telephone number of the requesting party's organization.
2. Name and Address of Other Party. The name of the contact person for the other party and the name, address and telephone number of the other party.
3. Name of Bargaining Unit. The name or a brief description of the bargaining unit involved.
4. List of Issues. A list of issues to be discussed in mediation.
5. Type of Agreement or Date of Reopener. Whether an initial or successor agreement or reopener is involved and the date of termination of the latest contract or of the reopener, if applicable.

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§ 3. Preventive Mediation.

Preventive mediation is a non-confrontational, collaborative technique for negotiating a collective bargaining agreement in which the mediator is on the scene before the negotiations begin. If necessary, the mediator trains the parties in interest-based bargaining so that the parties can work together to identify their individual and mutual interests and engage in joint problem solving to find ways to best meet such interests.

1. Requesting Preventive Mediation. Preventive mediation is initiated by joint request of the parties, indicating in writing their intention to participate in the process.
2. If Preventive Mediation Does Not Result in an Agreement. If preventive mediation does not result in an agreement, a new mediator will be assigned to assist the parties in traditional mediation upon the request of either party.

§ 4. Costs.

The mediator's fee and necessary expenses must be shared equally by the parties. The mediator's fee is established by 26 M.R.S.A §965(2)(C). In order to initiate mediation, a party must first file a mediation request form with the Board, pursuant to the filing requirements of Chapter 10, section 7. The party must also provide by mail or hand delivery to the Board's office a payment of \$750, the party's share of the estimated costs of mediation services. Upon receiving a request for mediation and the accompanying payment, the executive director shall appoint a mediator from the Panel of Mediators and shall bill the other party \$750 for its share of the estimated costs of mediation services. The executive director shall bill or reimburse the parties for any difference between the estimated costs that were collected and the actual costs of providing the services.

§ 5. Appointment of Mediators.

The executive director is responsible for appointing a member of the Panel of Mediators to assist the parties in resolving their dispute. The assigned mediator is responsible for scheduling all mediation sessions.

§ 6. Confidentiality in Mediation.

Any information disclosed by either party to the dispute to the mediator in the performance of the duties of a mediator is privileged, as provided by 26 M.R.S.A. §965(2).

(§ 7 - § 20. Reserved.)

## FACT-FINDING

### § 21. Who May Request Fact Finding.

Either party to a dispute may request the executive director to assign a fact-finding panel in accordance with these rules. When a request for fact finding is received, the executive director shall appoint a fact-finding panel, ordinarily of three members. In the case of judicial employees, if the parties agree to call upon the Board of Arbitration and Conciliation for fact-finding services, they must file a joint request for fact finding in accordance with 26 M.R.S.A. § 1285(3) and with these rules.

### § 22. Request to Waive Fact Finding.

Except in the case of judicial employees, if the parties agree not to follow the established fact-finding procedures, they shall jointly apply to the executive director to waive fact finding. The executive director may, in his or her discretion, concur with that agreement when substantial negotiating progress has been made prior to fact finding and the factual issues to be presented to an arbitrator or arbitration panel are reasonable and manageable in their number and difficulty.

### § 23. Request for Fact-Finding.

The filing party shall file the request for fact-finding with the executive director pursuant to the filing requirements of Chapter 10, section 7. The request may be submitted on a form supplied by the Board. The request must contain:

1. Name of Requesting Party. The name, address, business and residence telephone numbers of the person filing the request and, if different, the name, address, business and residence telephone numbers of the person responsible for making the presentation to the fact finders.
2. Name of Representatives of Other Party. The name, address, business and residence telephone numbers of the bargaining representative of the other party and, if different, the name, address, business and residence telephone numbers of the person who is expected to make the presentation to the fact finders on behalf of the other party, if known.

3. Name of Bargaining Unit. The name of the bargaining unit involved, or the bargaining units involved if the negotiations involve more than one bargaining unit.
4. Type of Request. A statement indicating whether the request is unilateral or joint. If it is a joint request, the request must include a statement indicating whether the request is a joint request for the services of the Board of Arbitration and Conciliation as fact finders or seeks the appointment of private fact finders by the executive director.
5. Issues in Controversy. An appended statement indicating the unresolved issues in controversy marked "Issues in Controversy, Exhibit 1" signed by the requesting party, if the request is unilateral, or signed by the requesting party and the bargaining representative of the other party if the request is joint.
6. Alternative Times and Dates. An indication of alternative times, dates and places suitable for the requested hearing and an indication of which, if any, are acceptable to both parties to the controversy.
7. Signatures. The place and date the request was made, the signature of each requesting individual and the capacity in which each individual is acting.

§ 24. Copy of Request to Other Party.

Any party making a unilateral request for fact finding shall mail or email a copy of that request to the other party.

§ 25. Qualification of Fact Finders.

No person may serve as a fact finder who is from the community involved in the dispute or who may have a conflict of interest arising from the circumstances of the controversy. However, if both parties waive this geographic restriction, the executive director may appoint fact finders who are residents of the community involved in the dispute.

§ 26. Appointment of Fact Finders.

The executive director shall appoint a panel of fact finders in accordance with this rule, whether the request is a joint request for fact finders from the Board of Arbitration and Conciliation (BAC) or a request for private fact finders.

1. Board of Arbitration and Conciliation (BAC). When the executive director has received a joint request for fact-finding services from members of the BAC, the

executive director may first bill the parties for the estimated costs in accordance with section 27 of this Chapter. Once one party has paid its share, the executive director shall appoint the fact-finding panel from the three categories of BAC members.

2. Private Fact Finders. When there is a request for private fact finders, the executive director shall appoint these fact finders by making reference to three lists of fact finders maintained by the Maine Labor Relations Board, marked "Management Representative Fact Finders," "Employee Representative Fact Finders" and "Neutral-Chair Fact Finders." The executive director shall submit the current list of employee fact finders to the bargaining agent and the current list of management fact finders to the public employer. After receipt of such lists, each party shall notify the executive director of the names, in order of preference, of no more than 5 persons from the list of fact finders which that party prefers to have appointed to the fact-finding panel. The executive director will make every effort to comply with the parties' wishes in appointing the employee and management representatives to the fact-finding panel, but is not required to do so. The executive director shall select one person from each of the lists provided by the parties to serve on the fact-finding panel and shall select one person from the "Neutral-Chair Fact-Finders" list to be chair of the panel.

#### § 27. Costs.

The costs for services of the fact-finding panel must be shared equally by the parties to the controversy. Costs include per diem expenses and actual and necessary travel and subsistence expenses for the panel, the costs, if any, of hiring the premises where the hearing is conducted and the costs and expenses incurred in the production and publication of the resulting report, including stenographic expenses. The billing process depends on whether the fact finders are members of the Board of Arbitration and Conciliation or private fact finders.

1. Board of Arbitration and Conciliation (BAC) Fact Finders. When a request for fact-finding services by members of the BAC is received, the executive director may estimate costs and collect those costs prior to providing the services. Per diem fees are established by statute in 26 M.R.S.A. §931. Once one party has paid its share of the estimated cost, the matter is scheduled for hearing. The executive director shall bill or reimburse the parties for any difference between the estimated costs that were collected and the actual costs of providing the services.
2. Private Fact Finders. The parties are billed directly for the costs of services provided by private fact finders. The fees are set by the individual private fact finders.

§ 28. Notice of Hearing.

Once the executive director has appointed fact finders and arranged for the hearing, the executive director shall notify all parties to the controversy and the fact finders of the time, place and date for the hearing. This notification to the parties and to the fact finders must be sent at least 10 working days prior to the date set for the hearing. This 10-day limitation may be modified for cause by the executive director.

§ 29. Cancellations.

A unilateral cancellation of a fact-finding hearing is not permitted once the letter of appointment and notice of hearing has been sent by the executive director. Fact-finding proceedings may only be cancelled or postponed if both parties to the controversy jointly agree and so notify the executive director and the members of the fact-finding panel. If a private fact-finding hearing is cancelled by joint agreement of the parties after the letter of appointment and notice of hearing has been sent, the members of the private fact-finding panel are entitled to a minimum of one day's compensation and reimbursement for expenses incurred if the cancellation occurs within 5 calendar days of the date of the hearing. Payment of these costs to the private fact finders must be shared equally by the parties to the controversy.

§ 30. Submission of Briefs or Statements.

Each party to the controversy shall submit a brief or statement on the unresolved issues in controversy to the other party, to each of the appointed members of the fact-finding panel, and to the executive director at least 5 working days prior to the date of hearing. This period may be modified by the executive director if less than 10 days' notice of the hearing is provided. This brief or statement may contain statements, facts, precedents, or other pertinent evidence to support that party's position on the issues in question. All issues to be heard in oral argument must be set forth in this brief or statement. If the fact-finding proceeding is unilaterally invoked, the non-invoking party must include in its brief or statement any new issues it will raise at the fact-finding proceeding. The party requesting fact finding shall submit with its brief the most recent collective bargaining agreement, if any, between it and the other party.

§ 31. Conduct of Hearings.

A fact-finding hearing is not a public hearing. A fact-finding hearing may only be public if all the parties and all the fact finders agree to have it public.

§ 32. *Ex Parte* Communications.

A party's representative may communicate with that side's partisan member of the fact-finding panel without violating any prohibition on *ex parte* communications. No party or other person legally interested in the outcome of a hearing, however, may communicate *ex parte* either directly or indirectly with the panel's neutral chair.

§ 33. Evidence.

The fact-finding panel shall base its findings of fact and recommendations upon reliable and credible evidence produced at the hearing, but the panel may not insist on adherence to the legal rules of evidence. The fact-finding panel may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Department of Labor. The panel has the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to them.

§ 34. Post-Hearing Briefs.

When requested by a majority of the fact-finding panel, post-hearing briefs must be submitted not more than 10 calendar days after the termination of the fact-finding hearing.

§ 35. Fact-Finders Report.

It is the responsibility of the chair of the fact-finding panel to prepare and distribute a fact-finding report containing the fact finders' findings and recommendations.

1. **Distribution; Due Date.** The chair of the fact-finding panel shall submit a copy of the fact-finding report to each of the parties to the controversy and the original and one duplicate to the executive director not more than 30 calendar days after the termination of the hearing or after the panel's receipt of any post-hearing evidence or argument.
2. **Extension of Due Date.** The 30-day limit for the distribution of the fact-finding report may be extended by the Maine Labor Relations Board or executive director only in extenuating circumstances if the chair of the fact-finding panel initiates the request for an extension at least 5 calendar days before the expiration of the 30-day period. The chair must confirm the request in writing and provide a copy to each party. The Board or executive director shall rule on the request, state whether or not the extension was granted and, if so, the length of the extension, and shall

send a copy of the ruling and the request to the chair of the fact-finding panel and to each of the parties to the controversy.

§ 36. Contents of Report.

As a minimum, the report must contain:

1. **Heading.** A clear and concise heading making it readily apparent that the report results from a fact-finding hearing.
2. **Parties.** A clear and concise designation of each of the parties to the controversy.
3. **Panel Members.** The name and affiliation of each member of the fact-finding panel.
4. **Time of Hearing.** Time, date and place of the commencement and termination of the hearing.
5. **Party Representatives.** Names and capacities of persons appearing for and representing each side in the controversy.
6. **Procedures Used.** Statement of procedures followed prior to the fact-finding hearing.
7. **Recommendations and Issues Resolved by Agreement.** A detailed description of each unresolved issue submitted as an issue in controversy indicating the issue, the position of each party at the time of hearing and the ultimate recommendation of the fact finders on that issue. Any issues resolved by mutual agreement prior to or at the hearing must also be noted. In the case of successor agreements, the applicable contract sections which are the subject of recommendations by the fact finders must be specifically identified by article and section number.
8. **Signatures.** Date, place, capacities and signatures of the members of the fact-finding panel and, in the absence of any member's signature, an indication of whether a minority report will be filed.

§ 37. Minority Reports.

Minority reports may be submitted as a result of fact-finding hearings but must be prepared by the fact finder submitting the minority report. A minority report, if any, must be filed with each of the parties to the controversy, with the majority members of the fact-finding panel and with the executive director not more than 10 working days after the submission of the majority report. A minority report must be clearly marked "Minority



Report," must contain the items specified in section 36 of this Chapter, subsections 1, 2 and 3, must clearly state each issue on which the panel member is dissenting and must state the dissenting member's recommendations and reasons on an issue-by-issue basis.

§ 38. Subsequent Action by the Parties.

The parties have a period of 30 calendar days after the receipt 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 that period, either party may make the fact-finding recommendations public, but not until the end of that period unless the parties otherwise jointly agree.

(§ 39 - § 50. Reserved.)

## ARBITRATION

§ 51. Joint Request Required for Board of Arbitration and Conciliation (BAC).

All requests for arbitration services from members of the BAC must be a joint request from the parties to the dispute. In the case of interest arbitration, both parties must sign a letter or form requesting interest arbitration from the BAC. In grievance arbitration cases, if the applicable collective bargaining agreement includes an agreement to use the services of the BAC, the request filed need not be a joint request.

§ 52. Costs.

When a joint request for arbitration services by members of the BAC is received, the executive director may estimate costs and collect those costs prior to providing the services. Per diem fees are established by statute in 26 M.R.S.A. §931. Once one party has paid its share of the estimated cost, the matter is scheduled for hearing. The executive director shall bill or reimburse the parties for any difference between the estimated costs that were collected and the actual costs of providing the services.

§ 53. Other Arbitration Proceedings.

If the parties do not agree to request the services of the BAC jointly, the procedures specified in the applicable collective bargaining statute for selecting an arbitrator or arbitration panel apply.

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STATUTORY AUTHORITY: 26 M.R.S.A. §968, sub-§3

EFFECTIVE DATE:

January 1, 2001

NON-SUBSTANTIVE CORRECTION:

February 20, 2001 - adjusted punctuation.

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