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### Maine

Elizabeth Ford

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## MAINE POLICE & NON-POLICE COLLECTIVE BARGAINING FACT SHEET

In Maine there are several areas of difference in the treatment of police and non-police collective bargaining. They include the following:

- **No Statutory Differences.** The Maine statute does not differentiate between police and non-police units.
- **Highly Qualified Board Members.** The Maine Labor Relations Board Members are uniformly qualified and the Board is well balanced between those with experiences with unions and those with experiences with employers.
- **No Police Cases Between 2003 and 2023.** There is thus no way to compare outcomes.
- **Police Oversight Must Be Bargained.** There is one 2001 case in which the Board found police oversight must be bargained, but in subsequent teacher cases, the Board found that evaluation of teacher performance did not need to be bargained.

### STATUTORY AUTHORITY FOR COLLECTIVE BARGAINING

#### **Coverage.**

Public sector collective bargaining in Maine is governed by two statutes. The Municipal Public Employment Relations Law (MPERL), 26 ME. REV. STAT. ANN. §§ 961 to 976 and the Maine State Employees Labor Relations Act (SERLA), 26 ME. REV. STAT. ANN. §§ 979 to 979-U. The MPERL covers cities, towns, counties, and certain other governmental subdivisions.<sup>1</sup> The SELRA covers employees of the executive branch of state government.<sup>2</sup> Neither statute contains any provisions particular to police collective bargaining and both statutes are virtually identical.

#### **Scope of Bargaining.**

Both statutes obligate “the public employer and the bargaining agent to bargain collectively.”<sup>3</sup> Collective bargaining includes the obligation to “confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration”<sup>4</sup> Under both statutes, employers are prohibited from "Refusing to bargain collectively with the bargaining agent . . . .”<sup>5</sup> Unlike many states, Maine does not delineate a set of statutory management prerogatives, suggesting a hospitable approach to negotiation.

#### **Impasse Procedure.**

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<sup>1</sup> 26 ME. REV. STAT. ANN. § 962(6).

<sup>2</sup> 26 ME. REV. STAT. ANN. § 979-A(6).

<sup>3</sup> 26 ME. REV. STAT. ANN. §§ 965, 979-D.

<sup>4</sup> 26 ME. REV. STAT. ANN. §§ 965(1)(C), 979-D(1)(E)(1),

<sup>5</sup> 26 ME. REV. STAT. ANN. §§ 964(1)(E), 979-C(1)(E)

All public employee unions and employers have accesses to binding interest arbitration but must first complete a series of steps designed to encourage voluntary settlement. First, the parties must go through mediation using one of panel of mediators appointed by the governor.<sup>6</sup> If no settlement is reached, the e parties may then request the MLRB appoint a fact-finding panel, which is empowered to issues a non-binding recommendation to the parties. If that does not prompt agreement, the recommended order can be made public.<sup>7</sup> Finally, if the parties remain at impasse, either party may request the MLRB appoint an interest arbitration panel which is only empowered to make a recommended order with respect to “salaries, pensions and insurance” but can issue a binding decision as to all other elements of the contract.<sup>8</sup> Strikes by any public employee are prohibited.<sup>9</sup>

## **Unfair Labor Practices**

The Maine Labor Relations Board (MLRB) is empowered to “prevent any person, any public employer, any public employee, any public employee organization or bargaining agent from engaging in any prohibited [practices].”<sup>10</sup> Complaints of prohibited practices are submitted to the Executive Director of MLRB, who makes an initial decision whether a violation *may* have occurred and if so sets a hearing before.<sup>11</sup> That hearing is conducted by the Chair of the MLRB.<sup>12</sup> After the hearing, the Board publishes findings of fact and conclusions of law explaining determination.<sup>13</sup>

The Board is comprised of three members and six alternates, all appointed by the governor for four-year terms.<sup>14</sup> Of the nine total appointees, one member and two alternates are designated as representing employers, one member and two alternates representing employees, and one member and two alternates representing the public.<sup>15</sup> The member who represents the public also serves as chair.<sup>16</sup>

## **Law Enforcement Officer Bill of Rights**

Maine does not have a LEOBOR statute.

## **AGENCIES**

### **Commonwealth Employment Relations Commission (CERB)**

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<sup>6</sup> 26 ME. REV. STAT. ANN. §§ 965(2)(C), 979-D(2)(C).

<sup>7</sup> 26 ME. REV. STAT. ANN. §§ 965(3), 979(D)(3).

<sup>8</sup> 26 ME. REV. STAT. ANN. §§ 965(4), 979(D)(4)(D).

<sup>9</sup> 26 ME. REV. STAT. ANN. §§ 964(2)(C)(3), 979-C(2)(C)(3)

<sup>10</sup> 26 ME. REV. STAT. ANN. § 968(5)(A); *accord* § 979-H(1).

<sup>11</sup> 26 ME. REV. STAT. ANN. §§ 968(5)(B), 979-H(2).

<sup>12</sup> 12-180-012 ME. CODE R. § 13 (LexisNexis 2024).

<sup>13</sup> 26 ME. REV. STAT. ANN. §§ 968(5)(C), 979-H(3).

<sup>14</sup> 26 ME. REV. STAT. ANN. § 968(1).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

- **Statute:** 26 ME. REV. STAT. ANN. § 968
- **Website:** <https://www.maine.gov/mlrb/>

**Board Members:** (unusually qualified as compared with other states)

**Sheila Mayberry, Esq.- Chair:** formerly an attorney with the NLRB and a Hearing officer for the State of Maine Retirement System.<sup>17</sup>

Shari Broder, Esq.- Alternate Chair. Currently serves as the Chair of the Maine Board of Arbitration and Conciliation.<sup>18</sup>

Rebekah Smith, Esq.- Alternate Chair. Currently private practice as arbitrator and mediator.<sup>19</sup>

**Michael Miles - Employer Representative.** Formerly HR Director for City of Portland, Maine, and currently an HR Consultant.<sup>20</sup>

Ann Freeman, Esq.- Alternate Employer Representative. Shareholder with Bernstein Shur, a Portland law firm.

Alyssa Tibbetts, Esq.- Alternate Employer Representative. Director with Jensen, Baird, Gardner and Henry, a Maine law firm representing business and local government.<sup>21</sup>

**Roberta de Araujo, Esq.- Employee Representative.** Former General Counsel for Maine State Employees Association.<sup>22</sup>

James Mackie - Alternate Employee Representative. Staff Representative, AFSCME Council 93.<sup>23</sup>

Jessica Maher, Esq. - Alternate Employee Representative. In private law practice representing individuals and unions.<sup>24</sup>

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<sup>17</sup> *Sheila Mayberry*, LINKEDIN, <https://www.linkedin.com/in/sheila-mayberry-09b0269b/> (last visited Aug. 13, 2024).

<sup>18</sup> *Shari Broder*, LINKEDIN, <https://www.linkedin.com/in/sharibroder/> (last visited Aug. 13, 2024).

<sup>19</sup> *Rebekah Smith*, LINKEDIN, <https://www.linkedin.com/in/rebekah-smith-1230ab73/> (last visited Aug. 13, 2024).

<sup>20</sup> *Mike Miles SPHR, SHRM-SCP*, LINKEDIN, <https://www.linkedin.com/in/mikemileshumanresourcesleader/> (last visited Aug. 13, 2024).

<sup>21</sup> *Alyssa Tibbetts*, LINKEDIN, <https://www.linkedin.com/in/alyssa-tibbetts-bab97217/> (last visited Aug. 13, 2024).

<sup>22</sup> *Roberta L. de Araujo, Esq.*, MARTINDALE, <https://www.martindale.com/attorney/roberta-l-de-araujo-esq-157575244/> (last visited Aug. 13, 2024).

<sup>23</sup> *Mackie James*, LINKEDIN, <https://www.linkedin.com/in/mackie-james-26642098/> (last visited Aug. 13, 2024).

<sup>24</sup> JESSICA MAHER LAW, LLC, <https://jessicamaherlaw.com> (last visited Aug. 13, 2024).

## COMMON LAW OF MANDATORY SUBJECTS

### **In General**

In Maine, an employer decision is a mandatory subject of bargaining if it “is significantly and materially related to ‘wages, hours, working conditions and contract grievance arbitration.’”<sup>25</sup> As noted above, there is no statutory management prerogative exception to the duty to bargain and the Board and Maine courts have expressly rejected the argument that a management prerogative exception is implied.<sup>26</sup>

### **Discipline and Oversight.**

Between 2003 and 2023, there are no cases interpreting mandatory subjects of bargaining for police bargaining units. Therefore, it is impossible to compare outcomes. There is, however, one case regarding police oversight issued in 2001 that provides a useful comparison. In that year, the City of Portland sought a pre-implementation decision as to whether its proposed Police Civilian Review Subcommittee was a mandatory subject of bargaining. Because the committee had not yet been formed, the Board evaluated two proposals presented by the City. In one, the Committee would have authority to investigate and impose discipline and in the other the committee would review only after the Department made its disciplinary decision but could still order additional investigation. The Board found that both would be mandatory subjects:

The operation of the Civilian Review Subcommittee proposed by the City is materially and significantly related to both the working condition of being the subject of an internal affairs investigation and the contract grievance arbitration procedures. The alternative proposal has an additional impact on disciplinary action and the timing of grievances, both mandatory subjects of bargaining.<sup>27</sup>

In the non-police context, by contrast, the Board has found that teacher evaluation procedures are not a mandatory bargaining subjects because those evaluations related “educational policy” not terms and conditions of employment.<sup>28</sup>

### **Reassignment and Skimming.**

There are no police cases in this area.

### **Subcontracting.**

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<sup>25</sup> City of Portland, Petition for Interpretive Ruling, No. 01-IR-01, 2001 WL 36390964, at \*2 (Me. Lab. Rels. Bd. June 27, 2001) (citation omitted).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at \*5.

<sup>28</sup> *Westbrook Sch. Dept. v. Westbrook Edu. Ass’n*, No. 18-18, 2018 WL 3185832 (Me. Lab. Rels. Bd. May 30, 2018); *but see Me. Sch. Admin. Dist. #6 Bd. of Dirs. v. Saco Valley Tchrs. Ass’n/Mea/Nea*, No. 12-20, 2012 WL 13093663 (Me. Lab. Rels. Bd. June 6, 2012) (declining to determine if a proposal re: teacher evals is a mandatory subject because of a scheduled fact-finding session, with the hopes that the parties would be able to settle their dispute amongst themselves, while also acknowledging that it is the Board’s duty to make such determinations).

There are no police cases in this area.

### **Duties**

There are no police cases in this area.

### **On the Lack of Police Cases**

Confounded by the lack of police cases promulgated from the MLRB, we reached out to the Maine State Law Enforcement Association (MSLEA) for answers. An Executive Director with the organization confirmed what we already suspected: “police unions in Maine don’t file many [complaints],”<sup>29</sup> and that in its history, the MSLEA has only ever filed two complaints, with a third pending, and that one of those complaints had been withdrawn before adjudication.<sup>30</sup>

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<sup>29</sup> E-mail from Kevin Anderson, Exec. Dir., Me. St. L. Enforcement Ass’n, to Roger Robertson, Rsch. Assistant to Professor Elizabeth Ford, Seattle Univ. Sch. of L. (July 22, 2024) (on file with author).

<sup>30</sup> *Id.*