

MAINE STATE LEGISLATURE

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E I G H T Y - N I N T H L E G I S L A T U R E

Legislative Document

No. 26

S. P. 34

House of Representatives, January 12, 1939.

Referred to the Committee on Labor and 1,000 copies ordered printed in concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Lee of Rumford.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT to Protect the Right of Employees to Organize and Bargain Collectively; and Creating a Labor Relations Board.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Short title. This act shall be known and may be cited as the "labor relations act."

Sec. 2. Findings and policy. Under prevailing economic conditions individual employees do not possess full freedom of association or actual liberty of contract. Employers in many instances organized in corporate or other forms of ownership associations with the aid of government authority have superior economic power in bargaining with employees. This growing inequality of bargaining power substantially and adversely affects the general welfare of the state by creating variations and instability in competitive wage rates and working conditions within and between industries and by depressing the purchasing power of wage earners, thus (a) creating sweat shops with their attendant dangers to the health, peace, and morals of the people, (b) increasing the disparity between production and consumption, and (c) tending to produce and aggravate recurrent business depressions. The denial by some employers of the right of employees to organize and the refusal by employers to accept the procedure

of collective bargaining tend to lead to strikes, lockouts and other forms of industrial strife and unrest, which are inimical to the public safety and welfare and frequently endanger the public health.

Experience has proved that protection by law of the right of employees to organize and bargain collectively removes certain recognized sources of industrial strife and unrest, encourages practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and tends to restore equality of bargaining power between employers and employees.

In the interpretation and application of this act, and otherwise, it is hereby declared to be the public policy of the state to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers.

All the provisions of this act shall be liberally construed for the accomplishment of this purpose.

This act shall be deemed an exercise of the police power of the state of Maine for the protection of the public welfare, prosperity, health and peace of the people of the state.

Sec. 3. Definitions. When used in this act—

(1) The term “person” includes 1 or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term “employer” includes an employer and any person acting directly or indirectly, on behalf of or in the interest of an employer with the employer’s knowledge or ratification, but a labor organization or any officer or agent thereof shall be considered an employer only with respect to individuals employed by such organization.

(3) The term “employee” shall include any employee and shall not be limited to the employees of a particular employer, unless the act explicitly states otherwise, and shall include (a) agricultural laborers, and (b) any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any

individual employed by his parent or spouse or in the domestic service of any person in his home.

(4) The term “representatives” is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and a labor organization serving as a representative need not be limited in membership to employees of, the employer whose employees are represented.

(5) The term “labor organization” means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, but shall not include any employee organization or association, agency or plan established, maintained, administered or assisted by any employer through action defined in the act as an unfair labor practice.

(6) The terms “collective bargaining” or “bargain collectively” include but are not restricted to the process of negotiating terms and conditions of employment conducted by employers and employees through their representatives, for the purpose of embodying the results of such negotiations in an agreement for a period of time.

(7) The term “unfair labor practice” means only those unfair labor practices listed in section 6 of this act.

(8) The term “labor dispute” includes, but is not restricted to, any controversy between employers and employees or their representatives as above defined, concerning (a) terms, tenure or conditions of employment or concerning (b) the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to negotiate, fix, maintain or change terms or conditions of employment, or concerning (c) the violation of any of the rights granted or affirmed by this act, regardless of whether the disputants stand in the proximate relations of employer and employee.

(9) The term “board” means the Labor Relations Board created by section 4 of this act.

(10) The term “policies of this act” means the policies set forth in section 2 of this act.

Sec. 4. Creation of board. (a) There is hereby created an independent administrative board to be known as the “Labor Relations Board,” (hereinafter referred to as the “board”) which shall be composed of 3 members who shall be appointed by the governor, and confirmed by the council. Each member of the board at the time of his appointment shall

be a citizen of the United States and a resident of the state of Maine, and shall have been a qualified elector in the state for a period of at least 1 year next preceding his appointment. No member of the board during his period of service as such shall hold any other office under the law of this state or of the United States. One of the original members shall be appointed for a term of 2 years, 1 for a term of 4 years and 1 for a term of 6 years, but their successors shall be appointed for terms of 6 years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he is to succeed. The governor shall designate 1 member to serve as chairman of the board.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and 2 members of the board shall, at all times, constitute a quorum. The board shall have an official seal of which courts shall take judicial notice.

(c) The board shall at the end of every 6 months make a report in writing to the governor, stating in detail the work it has done in hearing and deciding cases and otherwise, and it shall sign and report in full an opinion in every case decided by it.

(d) The members of the board shall receive annual salaries as follows: \$5,000 for the chairman and \$4,500 for each of the other 2 members, shall be eligible for reappointment and shall not engage in any other business, vocation or employment. The board shall appoint an executive secretary and such attorneys, examiners and regional directors and such other employees as it may from time to time find necessary for a proper performance of its duties. The board may establish or utilize such voluntary and uncompensated services as may from time to time be needed. Attorneys appointed under this section may, at the direction of the board, appear for and represent the board in any case in court.

(e) The principal office of the board shall be in the city of Augusta but it may meet and exercise any or all of its powers at any other place. The board may, by one or more of its members or by such agents or agencies as it may designate, prosecute in any part of this state any inquiry necessary to the performance of its functions. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case.

(f) The board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the board shall prescribe.

(g) All employees of the board with the exception of attorneys, trial examiners, regional directors, executive secretary and experts shall be appointed by the board by means of competitive examinations on the basis of training, practical experience, education and character, provided, that special regard should be given to the practical training and experience which workers may have for the particular position involved regardless of academic training. The board may dismiss any employee for delinquencies or misconduct in his or her duties. No employee of the board, except attorneys, trial examiners, regional directors, executive secretary and experts, shall be suspended, dismissed, or furloughed without a public hearing upon due notice. The board shall have the power to make such rules and regulations as may be necessary for the execution of the provisions of this subsection provided such rules are not inconsistent with the provisions thereof.

(h) The board or any of its agents or employees shall not engage in any effort to mediate, conciliate or arbitrate any labor dispute.

Sec. 5. Rights of employees. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 6. Unfair labor practice. It shall be an unfair labor practice for an employer—

(1) To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of employees or their representatives in the exercise of any right created or affirmed by this act.

(2) To distribute or circulate any blacklist of individuals exercising any right created or affirmed by this act or of members of a labor organization, or to inform any person of the exercise by any individual of such right, or of the membership of any individual in a labor organization for the purpose of preventing individuals so blacklisted or so named from obtaining or retaining employment.

(3) To dominate or interfere with the formation, existence, or administration of any employee organization or association, agency or plan which exists in whole or in part for the purpose of dealing with employers concerning terms or conditions of employment, labor disputes or grievances, or to contribute financial or other support to any such organization, by any means, including but not limited to the following: (a) by partici-

pating or assisting in, supervising, controlling or dominating (1) the initiation or creation of any such employee organization or association, agency, or plan, or (2) the meetings, management, operation, elections, formulation or amendment of constitution, rules or policies, of any such employee organization or association, agency or plan; (b) by urging the employees to join any such employee organization or association, agency or plan for the purpose of encouraging membership in the same; (c) by compensating any employee or individual for services performed in behalf of any such employee organization or association, agency or plan, or by donating free services, equipment, materials, office or meeting space or anything else of value for the use of any such employee organization or association, agency or plan; provided that, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(4) To discourage membership in any labor organization or to encourage membership in any employee organization or association, agency, or plan by discrimination in regard to hire or tenure of employment or in any term or condition of employment: provided that an employer may make an agreement with a labor organization, requiring membership therein as a condition of employment.

(5) To refuse to bargain collectively with the representatives of employees, subject to the provisions of section 7 (a).

(6) To refuse to discuss grievances with representatives of employees, subject to the provisions of section 7 (a).

(7) To discharge or otherwise discriminate against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this act.

(8) To do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce employees in the exercise of the rights guaranteed by this act.

Sec. 7. Representatives and elections. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting at an election conducted pursuant to this section, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: provided, that any individual employee or a group of employees shall have the right at

any time to present grievances to their employer; and provided further, that where no representatives have been designated as exclusive representatives for all employees as provided in this section, the employer shall have the duty to bargain collectively and to discuss grievances with representatives of his employees for and in behalf of the employees they actually represent.

(b) The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer, unit, craft unit, plant unit, or any other unit.

(c) Whenever it is alleged by an employee or his representative that there is a question or controversy concerning the representation of employees, the board shall investigate such question or controversy and certify in writing to all persons concerned the name or names of the representatives who have been designated or selected. In any such investigation the board may provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 8 or otherwise, and may take a secret ballot of employees, or use any other suitable method to ascertain such representatives (either before or after the aforesaid hearing), provided however, that the board shall not have authority to investigate any controversy between individuals or groups within the same labor organization.

(d) The board shall have power to determine who may participate in the election and to establish the rules governing any such election.

(e) If at an election conducted pursuant to this section 3 or more nominees for exclusive collective bargaining representatives appear on the ballot and no 1 of them receives a majority of the votes cast at the election, the 2 nominees who received the highest number of votes shall appear on the ballot of a 2nd election to be conducted hereunder, and the one receiving a majority of the votes cast at the 2nd election shall be the exclusive representative of all the employes in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

(f) Those nominated as the representative of employees shall be listed by name on the ballots authorized by section 7 (c): provided, that the board may determine that no representatives established, maintained or assisted by any action defined in this act as an unfair labor practice shall

be placed upon a ballot, certified or otherwise recognized as eligible to be the representative of employees under this act.

(g) The operation of this section shall not be limited by the existence of an agreement between an employer and representatives of employees recognizing such representatives as representatives of employees for the purposes of collective bargaining, but on the contrary such agreement shall be modified or superseded to the extent necessitated by the operation of this section: provided, that the operation of this subsection shall not extend to agreements entered into in good faith prior to the effective date of this act, but any such agreement entered into within 6 months prior to the effective date of this act shall be prima facie evidence that the same was not entered into in good faith.

Sec. 8. Prevention of unfair labor practices. The board is empowered and directed, as hereinafter provided, to prevent any employer from engaging in any unfair labor practice, and shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by agreement, law or otherwise: provided, that agreements concerning collective bargaining entered into in good faith prior to the effective date of this act shall not be affected by the operation of this subsection, but any such agreement entered into within 6 months prior to the effective date of this act shall be prima facie evidence that the same was not entered into in good faith.

(b) Whenever a charge has been made that any employer has engaged in or is engaging in any unfair labor practice, the board shall have power to issue and cause to be served upon such employer a complaint stating its charges and containing a notice of hearing before the board at a place fixed there to be held not less than 7 days after the serving of said complaint. The person so complained of shall have the right to file an answer to the original or amended complaint not less than 5 days after the service of such original or amended complaint and to appear in person or otherwise to give testimony at the place and time set in the complaint. In the discretion of a member or agent conducting the hearing or of the board any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the board or its agent shall not be bound by technical rules of evidence, but all findings of fact shall be based upon competent evidence.

(c) The testimony taken at the hearing shall be reduced to writing and filed with the board. The board upon notice may take further testimony or hear argument. If upon all the testimony taken the board shall determine that any person named in the complaint has engaged in or is

engaging in any unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such further affirmative or other action as will effectuate the policies of this act, including, but not limited to (1) withdrawal of recognition from and refraining from bargaining collectively with any employee organization or association, agency or plan established, maintained or assisted by any action defined in this act as an unfair labor practice; (2) awarding of back pay; (3) reinstatement with or without back pay of any employee discriminated against in violation of section 6, subdivision 4 or maintenance of a preferential list from which such employees shall be returned to work; (4) reinstatement with or without back pay of all employees whose work has ceased or whose return to work has been delayed or prevented as the result of the aforementioned or any other unfair labor practice in respect to any employee or employees or maintenance of a preferential list from which such employees shall be returned to work. Such order may further require such person to make reports from time to time showing the extent to which the order has been complied with. If upon all the testimony the board shall be of the opinion that the person or persons named in the complaint has not engaged in or is not engaging in any such unfair labor practice, then the board shall make its findings of fact and shall issue an order dismissing the complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The board shall not require, as a condition of taking action or issuing any order under this act, that employees on strike or engaged in any other concerted activity shall discontinue such strike or such activity.

Sec. 9. Judicial review. (a) The board shall have power to petition the superior court of any county wherein the unfair labor practice in question occurred or wherein any person charged with the commission of any unfair labor practice resides or transacts business for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief

or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been urged before the board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by competent evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, its member, agent, or agency, the court may order such additional evidence to be taken before the board, its member, agent, or agency, and to be made a part of the transcript. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the superior court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the supreme court on appeal by either party, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the supreme court, and the record so certified shall contain all that was before the superior court.

(b) Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the superior court of any county where the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, by filing in such court a written petition praying that the order of the board be modified or set aside. A copy of such petition shall be forthwith served upon the board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the board, including the pleading and testimony and order of the board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the board under subsection (a), and shall have the same exclusive jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the

order of the board; and the findings of the board as to the facts, if supported by competent evidence, shall in like manner be conclusive.

(c) The commencement of proceedings under subsection (a) or (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

(d) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified or setting aside in whole or in part an order of the board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by acts pertaining to equity jurisdiction of courts.

(e) Petitions filed under the provisions of this act shall be heard expeditiously and, if possible, within 10 days after they have been docketed; and shall be considered and determined upon the transcript filed, without requirement of printing. Upon the filing of a record in the superior court, the case shall be heard with greatest possible expedition, and shall take precedence of all other matters except matters of the same character.

Sec. 10. Investigatory powers. For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by sections 7 and 8:

(1) The board, or its duty authorized agents or agencies, shall at all reasonable times have access to, for the purposes of examination, and the right to examine, copy or photograph any evidence, including payrolls or lists of employees, of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the board, its member, agent, or agency, conducting the hearing or investigation. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) If any witness resides outside of the state, or through illness or other cause is unable to testify before the board or its member, agent, or agency conducting the hearing or investigation his or her testimony or disposition may be taken within or without this state, in such manner and in such form as the board or its member, agent or agency conducting the hearing may, by special order or general rule prescribe.

(3) In case of contumacy or refusal to obey a subpoena issued to any person, under the provisions of this act, the judge of the superior court

being jurisdiction of the inquiry shall have jurisdiction to issue to such person an order requiring such person to appear before the board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(4) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(5) Complaints, orders, and other process and papers of the board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the board, its member, agent, or agency shall be paid the same fees and mileage that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this state.

(6) All process of any court to which application may be made under this act may be served in the county wherein the defendant or other person required to be served resides or may be found.

(7) The several departments, commissions, divisions, authorities, boards, bureaus, agencies and offices of the state or any political subdivision or agency thereof, shall furnish the board, upon its request, all records, papers, and information in their possession relating to any matter before the board.

Sec. 11. Punitive provision. Any person who shall wilfully resist, prevent, impede, or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this act shall be

punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

Sec. 12. Repeal of inconsistent provisions. In so far as the provisions of this act are inconsistent with the provisions of any other act, general or special, or of any local law, the provisions of this act shall be controlling.

Sec. 13. Limitations. Nothing in this act shall be construed so as to interfere with, impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Sec. 14. Separability. If any clause, sentence, paragraph, or part of this act or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such invalid provisions not been included.