STATE OF MAINE

LEGISLATIVE RESEARCH COMMITTEE

SUMMARY REPORT

TO THE

ONE HUNDRED AND SIXTH LEGISLATURE

VOLUME ONE

JANUARY, 1973

STATE OF MAINE

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***Replaced Representative Gill

C O N T E N T S

PROPOSED BILLS TO BE SUBMITTED TO THE 106th LEGISLATURE

STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE
STATE HOUSE
AUGUSTA, MAINE 04330

January 3, 1973

To the Members of the 106th Legislature:

The Legislative Research Committee hereby has the pleasure of submitting to you its report on activities for the past two years. This summary, designated as Volume I, deals with both assigned and unassigned studies and contains the findings and recommendations pursuant thereto.

The Committee was unfortunate in the loss of its original vice-chairman, the late Representative John E. Gill of South Portland. In his death on July 23, 1972, the State of Maine lost an able public servant. We of the Committee gratefully acknowledge our indebtedness to his ability and his contribution to the work of the Committee.

The Committee also wishes to acknowledge with appreciation the countless public and private individuals, organizations and agencies without whose assistance and cooperation the Committee would not have reached its conclusions.

The members of the Committee appreciate having been chosen to participate in this work and sincerely hope the results of many hours of work and devoted study transmitted here will prove beneficial to the members of the Legislature and ultimately to the citizens of the State of Maine.

Respectfully submitted,

JOSEPH SEWALL, Chairman
Legislative Research Committee

STATE OF MAINE

LEGISLATIVE RESEARCH COMMITTEE

REPORT ON
COLLECTIVE BARGAINING

to the

ONE HUNDRED AND SIXTH LEGISLATURE

JANUARY, 1973
Legislative Research Committee
Publication 106-7

COLLECTIVE BARGAINING

ORDERED, the House concurring, that the Legislative Research Committee is directed to study the subject matter of the following bills: "AN ACT Extending Collective Bargaining Rights to Public Higher Education Personnel," Senate Paper No. 447, Legislative Document No. 1337; "AN ACT Providing Collective Bargaining Rights for Employees of the State and the University of Maine," House Paper No. 1119, Legislative Document No. 1590; and "AN ACT Granting State Employees and Employers the Right to Collective Bargaining," House Paper No. 1160, Legislative Document No. 1610, in order to determine and develop, if possible, by consultation with experts in public labor relations law and such public hearings as it deems appropriate, necessary amendments to existing Municipal Public Employees Labor Relations Law as provided in chapter 424 of the public laws of 1969 and later amendments to bring all public employees in Maine currently under the jurisdiction of the State, under one comprehensive public labor relations law; and be it further

ORDERED, that the State Department of Labor and Industry be directed to provide the Committee with such technical advice and assistance as the Committee feels necessary or appropriate to carry out the purposes of this Order; and be it further

ORDERED, that the Committee be authorized to employ professional and clerical assistance within the limits of funds provided; and be it further

ORDERED, that there is appropriated to the Committee from the Legislative Account the sum of $2,000 to carry out the purposes of this Order; and be it further

ORDERED, that the Committee report its findings at the next special or regular session of the Legislature; and be it further

ORDERED, that upon joint passage a copy of this Order be transmitted forthwith to said department as notice of the pending study.

SP 611	In Senate Chamber	House of Representatives
Shute	Read and Passed	Read and Passed
Franklin	June 21, 1971	June 22, 1971
	Sent down for concurrence	In concurrence

SUBCOMMITTEE ON COLLECTIVE BARGAINING

CHAIRMAN - Edwin H. Greeley

VICE CHAIRMAN - John L. Martin

Ethel B. Baker

Richard N. Berry

Albert E. Cote

COLLECTIVE BARGAINING

The Legislative Research Committee has studied the subject matter of the following bills under a directive of the 105th Legislature, Senate Paper 611, in order to determine and develop, through consultation with experts in public labor relations law and appropriate public hearings, possible amendments to existing Municipal Public Employees Labor Relations Law as provided in chapter 424 of the public laws of 1969 and later amendments to bring all public employees in Maine currently under jurisdiction of the State, under one comprehensive public labor relations law:

"An Act Extending Collective Bargaining Rights to Public Higher Education Personnel, " Senate Paper No. 447, Legislative Document No. 1337; "An Act Providing Collective Bargaining Rights for Employees of the State and the University of Maine," House Paper No. 1119, Legislative Document No. 1590; and "An Act Granting State Employees and Employers the Right to Collective Bargaining," House Paper No. 1160, Legislative Document No. 1610.

The State Department of Labor and Industry was also named under the terms of the legislative order to assist the Committee in this endeavor. The technical advice and generous assistance of Miss Marion E. Martin, Commissioner of Labor and Industry for Maine (now retired), who met on numerous occasions with the Committee,contributed greatly to the study and thus is gratefully acknowledged.

The Committee, in its research, found a definite lack of sophistication in the area of collective bargaining rights for public employees. It appears at present there are more questions than answers, more speculation than analysis, more estimates than exact data and more sources than useful information. For the most part, the state-of-the-art regarding the field of dispute settlement procedures in public employment is one typical of any newly developing area. The Committee observed that even though the so-called state-of-the-art of public dispute settlement varies by jurisdiction and on the whole, while improving, it is still in the experimental stage.

From a nationwide survey of employers who have to wrestle with this problem, the Committee learned, that with the exception of New York, none of the 21 states having some form of law to cover state employees appear to be satisfactory. Even the State of New York, which is considered to have the best labor relations law in the country, claims to have problems with it.

Based on the foregoing, as well as the complexities of the problems, the Committee does not feel this is the proper time to branch out and go into state employee collective bargaining. Instead, the Committee sees merit in waiting another two years. By that time there will be an increased level of sophistication, so if the Legislature moves in this direction the voters will know the subject matter and will have a better understanding of the purposes of such legislation. Then, and only then should such a complex law be overlaid and accepted.

During this 2-year development period, the Committee sees no serious need for a state employee labor relations act in the State of Maine for the following reasons:

First, under the State Employees Appeals Board, chapter 539 of the public laws of 1967 and later amendments, a grievance procedure is currently provided where a grievance may be aired and results can be obtained.

Second, the State Personnel Board presently has employee representatives on the board who protect the interest of employees at the policy level. In this respect, the Committee feels the State Personnel Law has performed well. It protects state workers, yet gives them a right of appeal. The Committee sees no logic in eliminating the Personnel Board and repealing the Personnel Law when it may take years through a collective bargaining process to provide the same securities that Maine workers have at the present time. Should these functions remain, the question then is how to gear in the Personnel Department and its rules to the collective bargaining process. As some may recall, before the enactment of the Personnel Law no one was secure in his position.

A third area to be considered when determining whether there is urgent and immediate need for collective bargaining laws for the protection of all public employees in this State is that municipal employees who do not come under the aegis of the State Personnel Law have been provided collective bargaining rights by the establishment of the Municipal Public Employees Labor Relations Law, chapter 424 of the public laws of 1969 and the provisions for Administrative Enforcement under chapter 609 of

the public laws of 1971. Included in this latter enactment were provisions for a new board and executive director to replace the already overburdened Appeals Board and Commissioner of Labor and Industry. Since the new Labor Relations Board did not become effective until June 9, 1972, it has not been in place long enough to actually take over their duties under the Municipal Public Employee Labor Relations Law. Conservative estimates indicate this board and director should be in place for at least one year and have an opportunity to know the administration in other states and what their problems are before imposing upon them the administration of another and more complex law. By this delay, the board would have the time required to become knowledgeable and to acquire the expertise necessary to help draft a workable state employees law.

Other difficulties revealed by this study which have not been answered to the Committee's satisfaction include the problem of who is management as far as the State is concerned. The Governor certainly can't act because he has to come to the Legislature for appropriations to implement any kind of an agreement that he might make. The Legislature can't act for the simple reason that it isn't organized until January and appropriation bills are submitted within the first two or three weeks of the session. There isn't time to negotiate a contract and appropriate funds to implement its terms while the Legislature is in session. A recess committee such as the Legislative Research Committee could make recommendations to the next Legislature, but it can't bind them. And even though a recommendation is made, the appropriation

committee and the whole Legislature may not support it. A department head can't act because he can speak only for the method in which he discharges the responsibilities assigned to him and they are very definite ones, the enforcement of the laws and the administration of them.

Presently, there isn't a practical answer to the problem of who is the employer, or who can speak for the State. This is a problem in other states. In New York, as in many other states, the problem of who can act as management has not been licked. New York has conquered the problem to the extent that all contracts are subject to approval by the Legislature. The result is that the Legislature has a finished product in its hands and it may, or may not, appropriate the money to implement the negotiated contract.

There is also a question of how the Personnel Department can be geared in to a new collective bargaining system as has been discussed above.

Another important area to be considered is the question of the right to strike. Two states, Hawaii and Pennsylvania have with certain limitations such rights. In negotiating contract terms many disputes arise either on content or phrasing. There are two ways in which to settle them. One is through strike and the other is through arbitration. There are two types of arbitration, binding and advisory. Under existing Maine law, there are 3 issues that are subject only to advisory arbitration. They are: Wages, insurance and pension. The right to strike and compulsory or binding arbitration are mutually exclusive. Both are alternate ways of reaching final settlement.

Another real problem in this State concerns the extent of union security clauses and the limit which would be acceptable to the

Legislature. In this respect, the tightest union security clause is the union shop where employees are required to join the union if they have been employed 6 weeks or 60 days and if an individual doesn't choose to join the union at that time, then he must be discharged. The next one is the agency shop where employees do not have to belong to a union, but they are required to pay the same amount as the dues to the union fund when it may be used for charitable purposes or for service by the union of its members. The next is maintenance of membership which provides that all those belonging to the union at the time a contract is written must continue to belong to the union until the end of the contract; or if a union member resigns, retires or leaves his job, he must be replaced by a union member. The final security clause is the check-off of dues. There are many contracts which provide for a check-off of dues. Certainly the State policy by Executive Order endorses the check-off of dues because it allows for such procedure for the Maine State Employees Association and the Maine Federation of Federal, State, County, Municipal Employees. The State policy on union security has gone thus far so the question now is, how much further should be proposed under a new law.

In reaching conclusions based on the foregoing, the Committee does not recommend the adoption of the legislative documents which are the subject of this study, nor does it support amendments proposed by the Legislative Order for a single comprehensive public employee labor relations law. In the alternative, the Committee recommends at least a 2-year delay in developing a public employee labor relations law, as previously discussed, in order to provide

time to acquire and properly apply much needed knowledge in the field. The Committee further feels it is not advisable to have one comprehensive law. It is the Committee's feeling that a separate law for state employees should be proposed at some future time which can include higher education personnel, rather than to try to amend the existing Municipal Employees Law to make it all-inclusive although administratively the present Public Employee Labor Relations Board could administer both laws whenever state or other public employees are given collective bargaining rights. The Committee cites the State of Wisconsin as a good example of this very problem.

Finally, the Committee is not fully convinced that all employee associations such as the AAUP, MSEA, AFL-CIO and MTA, to name a few, would presently be willing to forego their lobbying efforts before the Legislature in order to make collective bargaining effective despite the fact that purposeful negotiations would require that parties achieve their objectives at the bargaining table. End runs from the bargaining table can only serve to defeat the legal process and therefore must be guarded against.

In view of the findings briefly described in this report, the Committee recommends no legislative action at this time.