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STATE OF MAINE

Inter-Departmental Memorandum Date May 7, 1975

To Seth Bradstreet, Chairman

Dept. Agricultural Bargaining Board

From David Roseman, Assistant

Dept. Attorney General

Subject Board's power relating to unfair practices

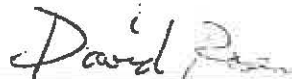
I am writing in response to the question you have raised in your memo of February 6, concerning 13 M.R.S.A. § 1957 and 13 M.R.S.A. § 1965. From our telephone conversation of March 19, it is my understanding that your question has not been asked as the result of any specific factual situation or problem having arisen. 13 M.R.S.A. § 1957(1) states: "Only those associations of producers that have qualified in accordance with this section shall be entitled to the benefits provided by this Article." 13 M.R.S.A. § 1965 deals with certain acts by handlers and associations, which are defined as unfair practices. The specific question you ask is whether the Agricultural Bargaining Board has the power to act on the complaint of a producer (that a handler is interfering with its freedom to join an association, and is this engaging in what is defined by 13 M.R.S.A. § 1965 as an unfair practice) prior to the producer's joining a qualified association.

The real question which must be answered is whether the Board has any power to act if a handler or producer engages in any unfair practice under § 1965. Section 1965 states that neither a handler nor an association shall engage in unfair practices, and defines what are considered unfair practices, but does not set forth what actions the Board may take when an unfair practice occurs. Furthermore, the procedure in §§ 1958 and 1959 for investigation, hearing and findings by the Board and for court enforcement of Board orders is, according to the express terms of those sections, to be utilized by the Board only when an ". . . association or handler refuses to bargain as that term is defined in subsection 1 . . . [of § 1958]" See § 1958(6). When the definitions of the terms "bargaining" and "unfair practices" are examined, it is obvious that one could engage in an unfair practice without having refused to bargain. Thus, one could argue that the Legislature has invested the Board with no authority to act when an "unfair practice" under § 1965 has occurred. However, the interpretation of the statute in that way would create an absurd result. It would mean that although the Legislature has said that handlers and associations "shall not engage . . . [in] unfair practices," (thus indicating the intent of the Legislature to prohibit unfair practices) the Legislature has made the Agricultural Bargaining Board powerless to act when unfair practices have occurred. It is a rule of statutory construction that "[t]he legislature is presumed not to intend an absurd result." *State v. Larrabee*, 161 A.2d 855, 958 (Me., 1960) Stated somewhat differently, "It is the proper function of this Court, in accordance with recognized principles of statutory

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interpretation, to avoid absurdity and declare as law legislative intention plainly manifested but inadequately expressed in words by providing the language which will more effectively reveal it." State v. Denis, 304 A.2d 377, 382 (Me., 1973). In addition, § 1965 is not to be considered in isolation, but is to be read together with the other sections of the statute, 13 M.R.S.A. § 1953 et seq. The statute is to be construed as a whole. State v. Koliche, 61 A.2d 115 (Me., 1948).

For the above reasons, it is reasonable to argue that the Board does have the power to act when a handler or association has engaged in any unfair practice. However, the question is not wholly free from doubt. And were the Board to act upon an unfair practice, it is possible that the handler or association charged may seek to litigate the question of the Board's authority. Therefore, it would seem to be a wise course of action to seek a clarification of § 1965 specifically setting forth the Board's power to act upon unfair practices, the extent of the Board's power, the procedures the Board would follow, and the scope of judicial review of Board action.



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