

# MAINE STATE LEGISLATURE

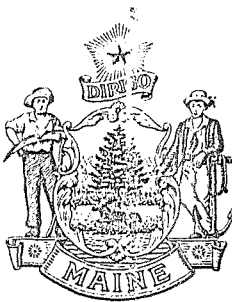
The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

79-84

RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 1, 1979

Honorable Charles P. Pray  
Maine Senate  
State House  
Augusta, Maine 04333

Dear Senator Pray:

By letter of April 25, 1979, you requested a brief answer to two questions on L.D. 949, "An Act to Allow Union to Negotiate on Behalf of Former Employees of a Company with Which the Union is Negotiating."

Your first question is whether the National Labor Relations Act (NLRA) "preempts state action in this area." Assuming that by "this area" you mean the specific subject matter of the bill, the research that I have been able to do in the limited time available indicates that L.D. 949 as it is written does not conflict with the NLRA. Since there appears to be no conflict with the federal Act, there is no issue of preemption. San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959), discussed in Kheel, Labor Law, V. 18A, § 9.01 (1973). In Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971), the United States Supreme Court held that retirees' benefits were not a mandatory subject of bargaining under the NLRA. The Court made it clear that retirees' benefits were a permissive subject of bargaining, that is, a subject on which parties to negotiations were free to bargain if they so chose. 404 U.S. at 181, n. 20, and at 183-188. Since L.D. 949 permits but does not mandate the bargaining of retirees' benefits, it is consistent with the Court's interpretation of the NLRA. Thus, it does not appear that problems of preemption would arise if the bill were enacted.

An answer to your second question, as to the effect of enactment if the NLRA did preempt, does not appear necessary.

I hope this response is helpful. If you need further assistance, please call.

Very truly yours,

*Kay R. H. Evans*

KAY R. H. EVANS  
Assistant Attorney General

KRHE/ec