ONE HUNDRED AND FIFTH LEGISLATURE

**Legislative Document** **No. 967**

H. P. 746 House of Representatives, February 19, 1971

Referred to Committee on Labor. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Simpson of Millinocket.

# STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-ONE

**AN ACT Creating the Maine Health Care Facilities Labor Relations Act.**

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

Sec. 1. R. S., T. 26, c. 10-A, additional. Title 26 of the Revised Statutes is amended by adding a new chapter 10-A to read as follows:

## CHAPTER 10-A

## MAINE HEALTH CARE FACILITIES LABOR RELATIONS ACT

§ 993. Short title

This chapter and all Acts amendatory thereof shall be known and may be cited as "The Maine Health Care Facilities Labor Relations Act."

§ 994. Declaration of policy

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between employers and employees of health care facilities by recognizing the right of such employees to form and join labor organizations of their own choosing and to be represented by such organizations in negotiating the terms and conditions of their employment. Employeees shall also have the right to refrain from any or all of such atcivities. It is further declared that the right of the public to uninterrupted health care service is as important as the right of employees to organize and bargain collectively and this chapter must be interpreted accordingly.

§ 995. Definitions

As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings:

1. Commissioner. "Commissioner" means the Commissioner of Labor and Industry.

2. Employee. "Employee" includes any employees and shall not be limited to employees of a particular employer and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute provided the employer has not replaced him with a permanent replacement and, provided further that work is available for him at the termination of such dispute, or because of any unfair labor practice on the part of the employer and who has not obtained any other regular and substantially equivalent employment, but shall not include employees of the United States or of any corporation wholly owned by the United States or of the State or any political subdivision thereof, or any individual over whom the National Labor Relations Board asserts jurisdiction. For the purposes of this subsection, a "permanent replacement" means an individual who replaces an individual whose work has ceased as a consequence of, or in connection with, any current labor dispute, if the duration of his employment is not to be determined with reference to the existence or duration of such labor dispute.

3. Employer. "Employer" includes any person acting in the interest of a health care facility directly or indirectly, but shall not include the United States or any corporation wholly owned by the United States, or the State or any political subdivision thereof, or any person over whom the National Labor Relations Board asserts jurisdiction, or any person, who employs less than five employees.

4. Health care facility. "Health care facility" means an organization or person acting in the interest of an employer, other than the State or any political subdivision thereof, directly or indirectly, and engaged, on a non-profit basis or as a public charity, in the operation of a general, mental, chronic disease, tuberculosis, or other type of hospital, clinic, infirmary, extended care facility, nursing home or any related facility such as a laboratory or an out-patient department.

5. Labor dispute. "Labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.

6. Labor organization. "Labor organization" means any organization or agency or employee representation committee on which employees participate and which exists for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. An organization shall not qualify as a 'labor organization' if its members include employees of their employer who do not qualify for inclusion in a bargaining unit as defined by section 998 or whose members include employees of their employer who are currently members of an organization to which the employer is liable for bargaining.

7. Person. "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

8. Professional employee. "Professional employee" means any employee engaged in work predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; involving the consistent exercise of discretion and judgment in its performance; of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

9. Secondary boycott. "Secondary boycott" means to engage in, or to induce or encourage any individual employed by a person with whom there is no labor dispute to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services; or to threaten, coerce or restrain any person with whom there is no labor dispute, where in either case the object thereof is forcing or requiring any person with whom there is no labor dispute to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing, or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under this chapter provided, that "secondary boycott" shall not include picketing and other publicity for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, so long as such publicity does not have the effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

10. Supervisory employee. "Supervisory employee" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

11. Unfair labor practice. "Unfair labor practice" means any of the unfair labor practices listed in section 1000-A.

§ 996. Right to organize; collective bargaining

Employees of a health care facility 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 other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 1000, subsection 1.

§ 997. Bargaining representative

Representatives, designated or selected for the purpose of collective bargaining by a majority of the employees in a unit most appropriate for such purposes, shall be the exclusive representative 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 terms or conditions of employment, and shall be so recognized by the employer, provided that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted without the intervention of the bargaining representative, so long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect and the bargaining representative has been given an opportunity to be present at such adjustment, provided further that a labor organization shall not have as an agent, consultant, observer or representative, for the purpose of attending meetings and conferences with an employer, any person who is an officer, representative or agent of any labor organization other than the labor organization or all organizations designated or selected by the employees in such unit as their collective bargaining representative pursuant to this section, including in the case of national and international organizations, their local unions, lodges, chapels or districts that admit to membership employees in the bargaining unit and, in the case of such local organizations, the national or international organization of which they are constitutent units.

§ 998. Bargaining unit

1. Petition. Whenever the parties involved fail to agree upon the bargaining unit, either party may petition the commissioner for a determination of the most appropriate bargaining unit. Upon receipt of the petition, the commissioner shall forthwith transmit the same to the Administrative Hearing Office, and proceedings pursuant to Title 5, chapters 301 to 307 shall be commenced, provided that Title 5, section 2452 shall not apply to proceedings under this section.

2. Determination. A determination of the most appropriate bargaining unit shall take into consideration but shall not be limited to the following:

Employees must have an identifiable community of interest and the effects of over-fragmentization.

3. Appropriate unit. The unit most appropriate for the purposes of collective bargaining shall be the employees of one employer; or a service, clerical, craft or professional unit of employees of one employer, if the mem-

bers of such unit are sufficiently distinguishable by tradition, skills and working arrangements from the other employees of the employer; provided that no unit shall be found to be the most appropriate if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit, or if such unit includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises, but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards, or if such unit includes employees holding executive or supervisory positions.

§ 999. Determination of bargaining agent

1. Voluntary recognition. Any employee organization may file a request with an employer alleging that a majority of the employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the employer and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. In the event that the employer does not desire that an election be held, he may voluntarily recognize employee representatives for collective bargaining purposes, provided the parties jointly request certification by the commissioner who shall issue such certification if he finds the unit to be appropriate and the request to be accompanied by an adequate demonstration of majority support for designated representatives.

2. Elections. The commissioner, upon signed request of an employer alleging that one or more employees or employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of employees or upon signed petition of at least 30% of a bargaining unit of employees that they desire to be represented by a given organization, shall conduct a secret election to determine whether the organization represents a majority of the members in the bargaining unit.

The petition referred to shall clearly state that the signers desire to have a given organization be their collective bargaining agent. The petition must be for no other purpose. The signatures thereon must be dated by the signers themselves and only those signatures signed within 6 months of filing are valid for purposes of determining the 30% of the bargaining unit.

The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the employees within the unit, together with a choice for any employee to designate that he does not desire to be represented by any bargaining unit.

Where more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and second largest number of votes. When

an organization is endorsed by a majority of the unit, the commissioner shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent is declared by the commissioner as not representing a majority of the unit.

Whenever the employer or 30% of the employees of the bargaining unit petitions for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent as set forth, provided that the employer shall not be required to present any proof that the recognized labor organization lacks the support of a majority of employees in the appropriate unit or units in question.

No election shall be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid certification shall have been held. Where there is a valid collective bargaining agreement in effect, the term of which does not exceed 3 years, no question of representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement.

3. Duty of bargaining representative. The bargaining agent certified by the commissioner or voluntarily recognized by the employer shall be required to represent all the employees within the unit without regard to membership in the organization certified or recognized as bargaining agent.

4. Election to grant or rescind representative authority for certain contracts.

A. Upon the filing with the commissioner by a labor organization, which is the representative of employees as provided in section 997 of a petition alleging that 30% or more of the employees within the bargaining unit it represents desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, the commissioner shall take a secret ballot of such employees and shall certify the results thereof to such labor organization and to the employer.

B. Upon the filing with the commissioner by 30% or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 1000, subsection 1, of a petition alleging a desire that such authority be rescinded, the commissioner shall take a secret ballot of the employees in such unit and shall certify the results thereof to such labor organization and to the employer.

C. No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election shall have been held pursuant to this subsection.

§ 1000. Contracts requiring union membership as a condition for employment

1. Union membership. An employer may make an agreement with a labor organization which is the certified bargaining representative of an

appropriate unit to require, as a condition of employment, membership in that labor organization on or after the 30th day from the beginning of such employment or the effective date of the agreement, whichever is later. The labor organization which is party to such an agreement must have been granted authority to enter into such a contract pursuant to section 999, subsection 4, paragraph A, and such authority must not have been rescinded according to section 999, subsection 4, paragraph B.

2. Application. The obligations of membership in a labor organization required by an agreement allowed by this section shall extend only to the payment of uniformly required initiation fees and periodic dues. Such membership shall not be deemed to conflict with the declaration of policy contained in section 994.

§ 1000-A. Unfair labor practices

1. Employer. It shall be an unfair labor practice for an employer:

A. To interfere with, restrain or coerce employees in the exercise of their rights guaranteed in section 996;

B. To dominate or interfere with the formation or administration of any labor organization or to contribute financial or other support to it or to its welfare fund, provided that financial or other support shall not be an unfair labor practice if it is in accordance with the terms of the basic collective bargaining agreement between employer and labor organization;

C. To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; provided that this subsection shall not be interpreted to restrict the right of the employer to make an agreement in accordance with section 1000 and where such an agreement is in effect, no employer shall justify any discrimination against an employee for nonmembership in a labor organization if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members or, if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

D. To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter;

E. To refuse to bargain collectively with the employees' representatives as determined under section 999.

F. To participate in any cessation, interruption, or variation of employment relations in violation of an existing written labor agreement or of a provision of this chapter.

2. Labor organizations. It shall be an unfair labor practice for a labor organization or its agents or employees in this unit:

A. To restrain or coerce employees in the exercise of the rights guaranteed in section 996, but this provision shall not prohibit peaceful organizational or recognitional picketing which is not in violation of paragraph F;

B. To cause or attempt to cause an employer to discriminate against an employee in violation of subsection 1, paragraph C or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

C. To refuse to bargain collectively with an employer provided the labor organization is the representative of that employer's employees;

D. To engage in a secondary boycott as defined in this chapter;

E. To require of employees covered by an agreement authorized under subsection 1, paragraph C, the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which is excessive or discriminatory under all the circumstances. In determining whether such a fee is excessive or discriminatory there shall be considered, among other relevant factors, the practices and customs of labor organizations in the particular locality, and the wages currently paid to the employees affected;

F. To strike or picket, or cause to be struck or picketed, or to threaten any such action against any establishment where such labor organization is not the currently certified or lawfully recognized representative of the person employed therein if any object thereof is forcing or requiring an employer to recognize or deal with a labor organization or to change or affect wages, hours, or other working conditions in such establishment or elsewhere or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(1) Where the employer has lawfully recognized in accordance with this chapter any other labor organization and a question concerning representation may not approximately be raised under section 999;

(2) Where within the preceding 12 months a valid election under section 999 has been conducted; or

Where such picketing has been conducted without a petition under section 999 being filed within a reasonable period of time not to exceed 30 days from the commencement of such picketing; provided that nothing in this subparagraph shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public, including consumers, that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver, or transport any goods or not to perform any services;

**G. To participate in any cessation, interruption or variation of employment relations in violation of an existing written labor agreement or a provision of this chapter.**

3. Employers; labor organizations; additional unfair labor practices.

A. It is an unfair labor practice for a health care facility employer to engage in or continue a lockout, or for a labor organization or employees to engage in or continue a strike or other work stoppage, slowdown or other attempt to interrupt a health care facility before the proceedings provided for in sections 1000-D to 1000-F have been completed.

B. No employee or labor organization or agents thereof may picket or otherwise publicize a dispute within or near a health care facility for any purpose, if such actions have an effect of inducing any person employed by any person other than said health care facility in the course of his employment not to pick up, deliver or transport any goods, or not to perform any services at said health care facility.

§ 1000-B. Obligation to bargain

For the purposes of this chapter to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, benefits, working conditions, grievance procedures, contract arbitrations and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, and to participate in good faith in any mediation, fact-finding, arbitration or other impasse solution procedures required by this chapter or agreed upon by the parties, provided that the failure or refusal of either party to agree to a proposal or to the making, changing or withdrawing of a lawful proposal or to make a concession shall not constitute or be evidence, direct or indirect, of a breach of this obligation; provided that the employer's obligation to bargain collectively shall not include negotiating on the subject of patient care policies; provided further that this section shall not require any employer to bargain collectively with respect to any decision not prohibited by other provisions of this chapter; to discontinue, contract out, sell or otherwise change, modify or dispose of his business, plant, equipment or operations or any part thereof, except that on request the employer, unless the collective bargaining agreement specifies the duties or the parties in such circumstances, without having to defer the decision or any action pursuant thereto shall meet and bargain with the representatives of any affected employees concerning the effect, if any, of such action upon such employees; provided further that where there is in effect a collective bargaining contract, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination of modification:

1. Serves a written notice upon the other party to the contract of the proposed termination or modification 60 days prior to the expiration date thereof,

or in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification;

2. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modification;

3. Notifies the commissioner and the State Board of Arbitration and Conciliation within 30 days after such notice of the existence of a dispute provided no agreement has been reached by that time; and

4. Continues in full force and effect all the terms and conditions of the existing contract for a period of 60 days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by subsections 2, 3 and 4 shall become inapplicable upon an intervening certification by the commissioner, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to section 997, and the duties so imposed shall not be construed as requiring either party to a collective bargaining agreement for a fixed period to discuss or agree to any modification of wages, hours and working conditions during the term of such contract, if such modification is to become effective before the subject matter thereof can be reopened under the provisions of the contract.

§ 1000-C. Review and enforcement

1. Review. The certification by the commissioner of the results of any election held pursuant to section 999 shall be subject to review pursuant to section 7. In any such proceeding for review of the certification of an election designating or failing to designate a bargaining representative the court may review any determination made by the Administrative Hearing Officer or the Superior Court as to the appropriate bargaining unit.

2. Prevention of unfair labor practices.

A. Violations of any of the provisions of section 1000-A may be enjoined by the Superior Court in a civil action upon complaint of any party effected by such violation. Sections 5 and 6 shall apply to any such injunction proceedings except that neither an allegation nor proof or unavoidable, substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction. If upon the proponderence of the evidence received, the court shall find that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the court 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 affirmative action, including reinstatement of employees with or without back pay and the awarding of damages, punitive and compensatory, as will effectuate the policies of this chapter. Provided that where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him. No order of the court

shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for just cause.

B. Whenever it is alleged that a party has violated section 1000-A, subsection 1, paragraph E or subsection 2, paragraph C, in considering such allegation the court may review any determination of the appropriate bargaining unit made by the commissioner pursuant to sections 998 and 999 unless the same has previously been reviewed pursuant to subsection 1.

C. A proceeding to review the certificate of the results of an election pursuant to subsection 1 may be joined with a proceeding under this subsection.

D. Whenever it appears that the conduct alleged to be an unfair labor practice is in violation of a collective bargaining agreement between the parties and said agreement provides for a method of resolving such disputes, which method has not been pursued, the court shall stay the proceedings and direct the parties to engage in the settlement procedures provided for in their contract making such protective orders as shall be necessary to preserve the rights of the parties.

E. Any unincorporated labor organization may sue or be sued as an entity and in behalf of the employees whom it represents. Service of process upon any unincorporated labor organization may be effected by personally serving a summons and complaint upon any officer of such unincorporated labor organization. Any money judgment against a labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

F. No proceeding shall be brought pursuant to this subsection based upon any unfair labor practice occurring more than 6 months prior to the filing of the complaint and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his separation from active duty.

§ 1000-D. Procedures in case of labor dispute.

In case of any labor dispute involving health care facility employees, except labor disputes concerning the designation or selection of collective bargaining representatives, the following procedures will be followed:

1. Agreement. Disputes for which a settlement procedure is provided in an agreement between a health care facility employer and a labor organization shall be handled in accordance with such procedure.

2. Wages, hours, etc. Disputes concerning wages, hours or other terms or conditions of employment, or concerning the interpretation or application

of a collective agreement, which are not settled by bargaining between the parties, or in accordance with subsection 1 shall be handled and settled in accordance with the following procedures:

A. The commissioner shall investigate such dispute to determine whether the parties have engaged in collective bargaining as defined in section 1000-B.

B. The commissioner, if the commissioner at any time concludes that the parties are not able to settle their disputes, shall urge upon the parties that they submit the same to mediation or voluntary arbitration in accordance with the Uniform Arbitration Act contained in Title 14, chapter 706.

If, within 30 days following the notice to the commissioner as provided in section 1000-B the dispute has not been resolved, or submitted to voluntary arbitration the commissioner forthwith shall refer such dispute to the State Board of Arbitration and Conciliation.

The parties must agree on the mediator or mediators and in the absence of an agreement the Chief Justice of the Supreme Judicial Court shall appoint a mediator or mediators.

Mediation terminates when the mediator advises both parties to the dispute in writing that, in his opinion, further mediation will not lead to a resolution of the dispute.

C. If the foregoing steps to resolve the dispute are not successful the commissioner shall refer the dispute to the Health Care Labor Board, which shall function in the manner provided in this section and in section 1000-E. The Health Care Board shall proceed promptly to conduct public or private informal hearings in said dispute, at which the parties shall appear and be heard. Following such hearings, and in any case within 30 days after the submission of the dispute to the board or such additional time as the commissioner may allow, the board shall make written findings and recommendations with respect to the issues in the dispute, and report such findings and recommendations to the commissioner and to the parties. Such findings and recommendations shall not be binding upon the parties. Either party may make such findings and recommendations public.

D. The parties shall thereupon, and for a period of 10 days following the filing with the commissioner of the report of the board, resume collective bargaining, and shall in good faith attempt to settle their disputes by this means. In the event the parties shall not reach an agreement or submit to arbitration within this period, the commissioner shall thereupon certify this fact and the issues remaining unsettled to the Governor, together with the complete record in this case.

E. The Governor shall forthwith make such report and recommendation public.

Section 1000-E. Health Care Labor Board.

1. The Health Care Labor Board shall be composed of 7 persons, appointed by the Governor with the advice and consent of the Executive Council, all of whom shall serve for a term of 5 years, one of whom shall be the Commissioner of Health and Welfare, one shall represent the Maine Hospital Association, one shall represent the Federated Labor Council of Maine, one shall represent the Associated Hospital Service of Maine, one shall represent health care insurance payors, and 2 shall represent the general public.

2. Notice of hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or by other representative. Hearings shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any oral or documentary evidence and other data deemed relevant by the board may be received in evidence. A transcript of the proceedings shall be taken, and for this purpose the commissioner shall supply the necessary stenographic service. The cost and expenses of such board proceedings, including a per diem fee of $50 and necessary expenses for each member of the board, shall be paid out of the General Fund.

3. Powers. The board appointed under this section shall have the power to administer oaths, require the attendance of witnesses and the production of such books, paper, contracts, agreements and documents as may be deemed by the board, material to a just determination of the issues in dispute, and may for such purpose issue subpoenas. If any person shall refuse to obey such subpoena, or shall refuse to be sworn to testify, or any witness, party or attorney is guilty of any contempt while in attendance at any hearing held under this chapter, the board may, or if requested, the Attorney General shall, on behalf of the board, invoke the aid of any Superior Court within the jurisdiction of which the hearing is being held, and such court shall have jurisdiction to issue an appropriate order. Any failure to obey such order may be punished by the court as a contempt thereof.

4. Evidence. The board in making its report and recommendations shall consider only the evidence in the record and shall be governed by the following:

A. When a valid contract is or was in existence defining the rights, duties and liabilities of the parties with respect to any matter in dispute, the board shall have power, as to such matter, only to determine the proper interpretation and application of the relevant contract provisions.

B. When there is no contract between the parties, or when there is a contract, but there are issues which have arisen with respect to a new contract or an amendment of an existing contract which, with respect to such issues, is subject to reopening and has been duly reopened, the standards, if any, which have been stipulated by the parties as properly controlling with respect to any such issues shall be applied. In the absence of such stipulation, the board shall make just and reasonable findings and recommendations. A majority vote of the members of the board shall constitute the recommendation of the board on any matter.

**§ 1000-F. Changing wages during proceedings.**

**During the pendency of proceedings under sections 993 to 1000-F, existing wages, hours and other terms and conditions of employment shall not be changed by action of either party without the consent of the other.**

**Sec. 2. R. S., T. 5, § 2301, amended.** Section 2301 of Title 5 of the Revised Statutes, as amended, is further amended by adding after the 19th paragraph, the following new paragraph:

**Commissioner of Labor and Industry, but only as he controls and supervises the determination of appropriate bargaining units.**

**Sec. 3. Appropriation.** There is appropriated from the General Fund the sum of $6,125 to the Health Care Labor Board to carry out the purposes of this Act. The breakdown shall be as follows:

| | 1971-72 | 1972-73 |
|---|---|---|
| HEALTH CARE LABOR BOARD | | |
| Personal Services | (7) $2,400 | (7) $3,000 |
| All Other | 225 | 500 |
| | $2,625 | $3,500 |

## STATEMENT OF FACT

It is the intent and purpose of this bill to provide a comprehensive labor relations system to achieve the purposes enunciated in the bill's "Declaration of policy."