

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1337

S. P. 447

In Senate, March 12, 1971

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Shute of Franklin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Extending Collective Bargaining Rights to Public
Higher Education Personnel.

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

Sec. 1. R. S., T. 26, § 962, sub-§ 1, repealed. Subsection 1 of section 962 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is repealed as follows:

†. Appeals board. "Appeals board" means the Public Employees Labor Relations Appeals Board referred to in section 968.

Sec. 2. R. S., T. 26, § 962, sub-§ 1-A, additional. Section 962 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended by adding a new subsection 1-A to read as follows:

1-A. Agency shop. "Agency shop" means any arrangement under which all public employees, whether or not members of a union or an employee organization, are represented by such union or organization and pay some sort of service fee to the union or organization.

Sec. 3. R. S., T. 26, § 962, sub-§ 2, amended. Subsection 2 of section 962 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

2. Bargaining agent. "Bargaining agent" means any lawful organization, association or individual representative of such organization or association which has as its primary purpose the representation of employees in their employment relations with employers, and which has been determined by the public employer or the ~~commissioner~~ commission to be the choice of the majority of the unit as their representative.

Sec. 4. R. S., T. 26, § 962, sub-§ 2-A, additional. Section 962 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended by adding a new subsection 2-A to read as follows:

2-A. Commission. "Commission" means the Maine Employment Relations Commission.

Sec. 5. R. S., T. 26, § 962, sub-§§ 3-4, repealed. Subsections 3 and 4 of section 962 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969 are repealed.

Sec. 6. R. S., T. 26, § 962, sub-§ 7, amended. Subsection 7 of section 962 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

7. Public employer. "Public employer" means any officer, board, commission, council, committee or other persons or body acting on behalf of any municipality or town or any subdivision thereof, or of any school, water, sewer or other district, or, for the purposes of this chapter any school, college or university providing education beyond the 12th grade and receiving $\frac{1}{3}$ or more of its operating funds by direct appropriation from the State or from any municipality, or school district thereof, or both.

Sec. 7. R. S., T. 26, § 964, sub-§ 2, ¶ C, sub-¶¶ 1-3, amended. Subparagraphs 1 to 3 of paragraph C of subsection 2 of section 964 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, are amended to read as follows:

- (1) A work stoppage which will irreparably injure the public health and safety;
 - (2) A slowdown which will irreparably injure the public health and safety;
 - (3) A strike which will irreparably injure the public health and safety;
- or

Sec. 8. R. S., T. 26, § 964, sub-§ 3, repealed and replaced. Subsection 3 of section 964 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is repealed and the following enacted in place thereof:

3. Violations. The commission may after hearing issue cease and desist orders upon complaint of any party affected by such violation and upon finding by the commission that the facts alleged in the complaint are true and constitute a violation of this section, except that neither an allegation nor proof of unavoidable substantial or irreparable injury to the complainant's property shall be required. In connection therewith, complaints may be brought by or against any unincorporated employee organization in the name by which it is known. The Superior Court shall have jurisdiction to enforce all such orders of the commission.

Sec. 9. R. S., T. 26, § 965, sub-§ 1, ¶ C, repealed and replaced. Paragraph C of subsection 1 of section 965 of Title 26 of the Revised Statutes, as en-

acted by section 1 of chapter 424 of the public laws of 1969, is repealed and the following enacted in place thereof:

C. To confer and negotiate in good faith with respect to terms of employment, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make concessions. For the purpose of this paragraph, educational policies shall not include wages, hours, the agency shop, working conditions, contract grievance arbitration, tenure, teaching load, teaching duties, physical facilities and teaching aids.

Sec. 10. R. S., T. 26, § 965, sub-§ 1, ¶ E, amended. Paragraph E of subsection 1 of section 965 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

E. To participate in good faith in the fact-finding and arbitration procedures required by this section.

Whenever wages, rates of pay or any other matter requiring appropriation of money by any municipality, school district, of the State are included as a matter of collective bargaining conducted pursuant to this chapter, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget.

Sec. 11. R. S., T. 26, § 965, sub-§ 2, amended. Subsection 2 of section 965 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

2. Mediation. Mediation procedures shall be followed whenever the parties jointly agree to use such services, whenever one of the parties to the dispute request such services, or whenever such services are offered by any state or federal mediation service.

Sec. 12. R. S., T. 26, § 965, sub-§ 3, amended. Subsection 3 of section 965 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

3. Fact-finding. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Board of Arbitration and Conciliation for fact-finding services with recommendations or to pursue some other mutually acceptable fact-finding procedure.

If the parties do not jointly agree to call upon the Maine Board of Arbitration and Conciliation or to jointly pursue some other procedure, either party to the controversy may request the ~~commissioner~~ commission to assign a fact-finder or a fact-finding board. If so requested, the ~~commissioner~~ commission shall appoint a fact-finder or a fact-finding board, ~~ordinarily of 3 members~~ in accordance with rules and procedures prescribed by the ~~commissioner~~ commission for making such appointment. The fact-finder or the fact-finding board shall be appointed from a list maintained by the ~~commissioner~~ commission and drawn up after consultation with representatives of state and local.

government administrators, agencies with industrial relations and personnel functions and representatives of employee organizations and of employers. Any person who has actively participated as the mediator in the immediate proceedings for which fact-findings has been called shall not sit as a **fact-finder** or on that fact-finding board. The **fact-finder** or board shall hear the contending parties to the controversy. ~~¶~~ **The fact-finder or fact-finding board** may request statistical data and reports on its own initiative in addition to the data regularly maintained by the ~~commissioner~~ **commission**. **The fact-finder or fact-finding board shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to them for determination.** The fact-finder or the members of the fact-finding board shall submit their findings and recommendations to the parties only.

The parties shall have a period of 30 days, after the receipt of findings and recommendations from the ~~fact finders~~, **fact-finder or fact-finding board** in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of said period, either party or the **fact-finder or fact-finding body** may, but not until the end of said period unless the parties otherwise jointly agree, make the fact-finding and recommendations public.

Sec. 13. R. S., T. 26, § 965, sub-§ 5, amended. Subsection 5 of section 965 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

5. **Costs.** The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding or arbitration proceedings are conducted, will be shared equally by the parties to the arbitration. All other costs will be assumed by the party incurring them. The services of the ~~members of the State of Maine's~~ Panel of Mediators, ~~and of the~~ Maine Board of Arbitration and Conciliation and **personnel supplied by the commission** are available to the parties without cost.

Sec. 14. R. S., T. 26, § 966, amended. Section 966 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, and as amended by section 3 of chapter 578 of the public laws of 1969, is further amended to read as follows:

§ 966. Bargaining unit; how determined

In the event of a dispute between the public employer and ~~an~~ **a public** employee or employees as to the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the ~~commissioner~~ **commission** shall make the determination, except that anyone excepted from the definition of public employee under section 962 may not be included in a bargaining unit. **To assist ~~in~~ in** determining whether a supervisory position should be excluded from coverage under this chapter, the ~~commissioner~~ **commission** shall **establish such regulations as it**

deems necessary. In establishing such regulations the commission shall consider, among other criteria, ~~if~~ whether the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing ~~the provisions of~~ a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards. Nothing in this chapter is intended to require the exclusion of principals, assistant principals, other supervisory employees from school system bargaining units which include teachers and nurses in supervisory positions.

The ~~commissioner~~ commission shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof and no unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, except that teachers may be included in a unit consisting of other certificated employees.

In determining community of interest, the commission shall consider such factors as similar working conditions, common supervision, and physical location.

In determining appropriate bargaining units for public higher education personnel, the commission shall not include professional faculty, professional nonfaculty, classified employees and nonsupervisory administrative employees for membership in the same unit unless a majority of such employees vote for inclusion in the same unit.

Sec. 15. R. S., T. 26, § 967, sub-§ 2, amended. The first paragraph of subsection 2 of section 967 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

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

Sec. 16. R. S., T. 26, § 967, sub-§ 2, amended. The 4th paragraph of subsection 2 of section 967 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, and as amended by section 5 of chapter 578 of the public laws of 1969, is further amended to read as follows:

No question concerning representation or request for election to determine a bargaining agent may be raised within one year of a certification or attempted certification or voluntary recognition. Where there is a valid collective bargaining agreement in effect, no question concerning the bargaining unit or representation or a request for an election may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement.

Sec. 17. R. S., T. 26, § 967, sub-§ 2, amended. The 5th paragraph of subsection 2 of section 967 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is amended to read as follows:

The bargaining agent certified by the ~~commissioner~~ **commission** as the exclusive bargaining agent shall be required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, provided that any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance.

Sec. 18. R. S., T. 26, § 968, repealed and replaced. Section 968 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, and as amended by sections 5-A, 6 and 6-A of chapter 578 of the public laws of 1969, is repealed and the following enacted in place thereof.

§ 968. Maine Employment Relations Commission established

1. **Maine Employment Relations Commission.** The Maine Employment Relations Commission shall consist of 3 members to be appointed by the Governor. The Governor, in making his appointments, shall name one to represent public employees, one to represent public employers and the 3rd to represent the public, who shall be its chairman. Members of the board, except the chairman, shall each receive \$100 a day for their services, for the time actually employed in the discharge of their official duties and shall be reimbursed for necessary expenses incurred in the discharge of their duties. The chairman shall serve full time and receive a salary set by the Governor. The term of each member shall be for a period of 4 years, except that the one representing public employees shall be initially appointed to serve a term of 3 years and the member representing the public employers shall initially be appointed to a term of 2 years.

The commission shall from time to time adopt such rules of procedure as it deems necessary for the orderly conduct of its business, and shall annually, on or before the first day of July, make a report to the Governor and Council.

The commission shall sit at the call of the chairman. Decisions of the commission shall be subject to review by the Superior Court in the manner specified in section 972.

The commission shall have the authority to recommend to the Legislature changes or additions to this chapter or of related enactments of law.

2. **Summoning witnesses; production of books and records.** In any hearings held by the commission, the commission may summon as witnesses any employee or any person in the department who keeps records of wages earned in the business in which the controversy exists and may require the production of books which contain the record of wages paid. Summonses may be signed and oaths administered by any member of the commission. Witnesses summoned by the commission shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees together with all necessary expenses of the commission shall be paid by the Treasurer of State on warrants drawn by the State Controller.

3. **Hearings.** All hearings shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the commission may be received in evidence. The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to them for determination.

The hearings conducted by the commission shall be concluded within 20 days of the time of commencement of the hearings. Within 10 days after the conclusion of the hearings the commission shall make written findings and a written statement upon the issue presented, a copy of which shall be mailed or otherwise delivered to the labor organization or bargaining agent or its attorney or other designated representative and the public employer.

Sec. 19. R. S., T. 26, § 971, repealed and replaced. Section 971 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 424 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 971. Rules and regulations

The commission may issue such rules and regulations as the commission may consider necessary or appropriate for carrying out the purposes of this chapter.

Sec. 20. R. S., T. 26, § 972, amended. Section 972 of Title 26 of the Revised Statutes, as enacted by section 7 of chapter 578 of the public laws of 1969, is amended to read as follows:

§ 972. Review

Either party may seek a review by the Superior Court of a binding determination by an arbitration panel or a decision of the ~~Public Employees Labor Relations Appeal Board~~ **commission**. Such review shall be sought in accordance with Rule 80 B of the Rules of Civil Procedure.

The binding determination of an arbitration panel or arbitrator or the decision of the ~~Public Employees Labor Relations Appeal Board~~ **commission**, in the absence of fraud, upon all questions of fact shall be final. The Court may,

after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action.

Sec. 21. Appropriation. There is appropriated from the General Fund the sum of \$200,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1971-72	1972-73
MAINE EMPLOYMENT RELATIONS COMMISSION		
Personal Services	(5) \$ 75,000	(5) \$ 82,000
All Other	23,500	20,000
	<hr/> \$ 98,000	<hr/> \$102,000

STATEMENT OF FACT

This bill is a product of the report prepared by the Maine Education Council in response to the Joint Order of the 104th Legislature, S. P. 648. The report in its entirety has been given to the Joint Committee on Education, and this statement is a summary of that full report.

The bill accomplishes the following purposes:

1. The right to engage in collective bargaining is extended to professional and non-professional employees of institutions of higher education;
2. An independent state agency, the Employment Relations Commission, is created to administer and enforce the amended Act, including bargaining unit determinations, unit representation, unfair labor practices, and coordinate mediation, arbitration and fact-finding procedures.
3. A limited right to strike is granted to employees in the public sector where such strikes would not endanger public health or safety; and
4. The right to form agency shops is granted to public employees in order to develop increased union security.