

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1610

H. P. 1160

House of Representatives, March 17, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Curtis of Orono.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Granting State Employees and Employers the
Right to Collective Bargaining.

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

R. S., T. 5, c. 65, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 65 to read as follows:

CHAPTER 65

PUBLIC EMPLOYMENT RELATIONS LAW

§ 761. Purpose

The Legislature declares that it is the purpose of this chapter to promote more cooperative and effective work relationships between State Government and its employees, and to assure the public an orderly and uninterrupted state service at all times. Such purpose can best be effected by:

1. Right to organize. Granting to state employees the right to organize for the purpose of collective bargaining, elect representatives to negotiate with the state employer, and enter into written agreements in regard to wages, hours and other conditions of employment;
2. Board. Creating a public employment relations board to assist in resolving disputes between state employees and the state employer;
3. Labor practices. Prohibiting unfair labor practices by state employees or the state employer;
4. Illegal strikes. Prohibiting illegal strikes by state employees; and

5. Remedies. Providing remedies for violations of such prohibitions.

§ 762. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Appropriate bargaining unit. "Appropriate bargaining unit" shall mean any group that is formed by state employees and designated to be proper for the purpose of collective bargaining pursuant to section 765.

2. Arbitration. "Arbitration" shall mean the procedure by which parties involved in a dispute mutually agree to submit their differences to a 3rd party for a final and binding decision.

3. Bargain collectively. "Bargain collectively" shall mean the performance of the mutual obligation of the state employer and the exclusive representative to meet at reasonable times, including meetings appropriately related to the state budget-making process, and confer in good faith with respect to wages, hours, conditions of employment and other matters, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached, but neither party shall be compelled to agree to a proposal or make a concession under such obligation.

4. Board. "Board" shall mean the Maine Public Employment Relations Board created by section 771.

5. Budget submission date. "Budget submission date" shall mean the time by which, under law or custom, the state's proposed budget, or a budget containing proposed expenditures applicable to the State, is submitted to the Bureau of the Budget.

6. Employee organization. "Employee organization" shall mean any organization in which state employees participate which exists for the primary purpose of improving terms and conditions of state employment.

7. Exclusive representative. "Exclusive representative" shall mean any employee organization which as a result of recognition by the state employer or certification by the board or both has the sole right to be the collective bargaining agent for an appropriate agent.

8. Fact-finding. "Fact-finding" shall mean:

A. Identification of the major issues in a particular dispute;

B. Review of the positions of the parties;

C. Resolution of the factual differences by one or more impartial fact-finders;

D. Written recommendations by the fact-finders for the settlement of the dispute.

9. Impasse. "Impasse" shall mean a condition which exists when the state employer and a state employee representative fail to reach an agree-

ment during the course of bargaining regarding matter within the scope of bargaining at least 180 days prior to the budget submission date.

10. Mediation. "Mediation" shall mean the assistance of an impartial 3rd party to resolve an impasse through interpretation, suggestion and advice to the parties.

11. Membership dues checkoff. "Membership dues checkoff" shall mean the obligation or practice of the State Government or any state agency to deduct from the salary of a state employee, with his consent, an amount for the payment of his membership dues in an employee organization and the obligation or practice of such government or agency to transmit this amount to such organization.

12. Professional employee. "Professional employee" shall mean:

A. Any employee engaged in work:

(1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

(2) Involving the consistent exercise of discretion and judgment in its performance;

(3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period;

(4) 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; or

B. Any employee who:

(1) Has completed the courses of specialized intellectual instruction and study described in paragraph A, subparagraph (4) and

(2) Is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subparagraph (1).

13. Service fee. "Service fee" shall mean an assessment on all employees in an appropriate bargaining unit to pay the cost of services rendered by the exclusive representative of such unit in negotiations and contract administration.

14. State employee. "State employee" shall mean any person who is employed by the State of Maine, the University of Maine, Maine Maritime Commission, Maine-New Hampshire Interstate Bridge Authority, Maine Turnpike Authority and the Maine Port Authority, but shall not include appointees of the Governor, department heads, members of the Legislature, members of public boards or commissions or the organized militia of the State.

15. State employer. "State employer" shall mean the State of Maine, the University of Maine, Maine Maritime Commission, Maine-New Hampshire Interstate Bridge Authority, the Maine Turnpike Authority and the Maine Port Authority as well as those individuals who represent these entities.

16. Strike. "Strike" shall mean any concerted work stoppage or slow-down, failure to report for duty, willful absence from one's position, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment by a state employee, for the purpose of including, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of such employment.

§ 763. Right to organize

State employees shall have the right to organize, form, join or participate in any employee organization of their choosing. Employees shall be free to refrain from such activities except to the extent of making payment of a service fee to the exclusive representative in their appropriate bargaining unit.

§ 764. Right of representation; representative rights

1. Right of representation. State employees within an appropriate bargaining unit shall have the right to be represented by an employee organization for the purpose of collective bargaining and contract administration.

2. Rights of employee representatives. Employee representatives shall have the right:

A. To be recognized or certified as the exclusive representative in any bargaining unit, and, if so recognized or certified:

(1) To membership dues checkoff within such unit;

(2) To assess a service fee to defray the cost of services rendered in negotiations and contract administration within an appropriate bargaining unit. Such fee shall be deducted by the state employer from the payroll of each employee within said unit. The fee shall be computed on a prorata basis and remitted to the exclusive representative, provided that such employer shall not be obligated to make said deduction until such representative has submitted a reasonable statement of cost.

§ 765. Appropriate bargaining unit

1. Bargaining unit. State employees and the employer may, by mutual consent, decide an appropriate bargaining unit. In establishing such unit the parties shall consider:

A. Community of interest among the employees;

B. Compatibility of the proposed unit with the joint responsibility of the employees and the employer to serve the public;

C. Duties, skills and working conditions of the employees;

D. Extent of organization among the employees;

E. History of collective bargaining by the employees and their representative.

2. Service of board. State employees who cannot gain recognition for the proposed unit from the state employer within 60 days after the submission of the initial request may use the services of the board to resolve the dispute. The board shall consider the factors outlined in subsection 1 in reaching a decision in regard to such unit, and its determination shall be final and nonappealable.

3. Inclusion. Notwithstanding any other provision of this chapter, no appropriate unit shall include both professional and nonprofessional employees, unless the majority of such professional employees vote to be included.

§ 766. Determination of representation status; election; certification

Whenever a petition is filed:

1. Employee or organization. By a state employee or employee organization:

A. Alleging that 30% or more of the state employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining and that the state employer declines to recognize their representative, or

B. Alleging that the employee organization, which has been certified or is being currently recognized by their state employer as the bargaining representative, is no longer representative of a majority of employees within such unit; or

2. Employer or representative. By the state employer or his representative alleging that one or more employee organizations have presented to him a claim to be recognized as the representative as defined in section 764.

3. Hearing. The board shall investigate such petition and, if it has reasonable cause to believe that a question of representation exists, shall provide a hearing after due notice to the proper parties. If the board finds upon the record of hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof, and the employee organization receiving the majority of votes cast shall be certified as the exclusive representative of all employees in the appropriate bargaining unit.

A. In the event that none of the choices on the ballot receive a majority of the votes cast, a runoff election shall be conducted, the runoff ballot providing for a selection between the 2 choices receiving the largest number of votes cast in the original election;

B. No election shall be directed in any bargaining unit, or subdivision thereof, in which a valid election has been held during the preceding 12-month period.

C. No election shall be directed in any bargaining unit or subdivision thereof where there is in force a valid collective bargaining agreement which is of fixed duration, except upon written petitions, as provided herein, delivered not more than 90 days nor less than 60 days prior to the expiration date of such agreement.

D. The board shall determine who is eligible to vote in an election and shall establish rules to govern such election.

§ 767. Right to enter into collective bargaining agreement

1. Agreement, bargaining unit. The exclusive representative within an appropriate bargaining unit shall have the right to enter into a collective bargaining agreement with the state employer.

2. State employer. The state employer shall have the right to enter into a collective bargaining agreement with the exclusive representative within an appropriate bargaining unit.

3. Writing. Any agreement reached between the exclusive representative within an appropriate bargaining unit and the state employer shall be reduced to writing at the request of either party, but neither party shall be required to make a concession.

§ 768. Scope of collective bargaining

1. Conditions. Matters subject to collective bargaining are the following conditions of employment:

- A. Grievance procedures;
- B. Work schedules relating to assigned hours and days of the week and shift assignments;
- C. Scheduling of vacations and other time off;
- D. Use of sick leave;
- E. Application and interpretation of established work rules;
- F. Health and safety practices;
- G. Application of seniority rights as affecting the matter herein;
- H. Amount of wages to be paid in each salary range and step and length of service necessary for incremental and longevity steps.

2. Laws and rules. Except as expressly provided nothing in this chapter shall require the state's employer to bargain in relation to statutory and rule-provided prerogatives of promotion, layoff, classifications, examinations, discipline, merit salary determination policy and other actions provided by law and rules governing civil service.

§ 769. Employer rights

1. Noninterference. Nothing in this chapter shall interfere with the right of the state employer, in accordance with applicable law, rules and regulations to:

- A. Carry out the statutory mandate and goals assigned to any department or agency in the most efficient manner possible;
- B. Manage employees, and in this regard to:
 - (1) Hire, promote, transfer, assign or retain such employees; and
 - (2) Establish reasonable work rules;
- C. Suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause;
- D. Lay off employees under conditions where continuation of work would be inefficient and nonproductive.

§ 770. Written agreements; grievances; impasses

1. Written agreement. An employee representative shall have the right to enter into a written agreement with the state employer setting forth a grievance procedure culminating in a final and binding decision. Such procedure shall be invoked in the event of any dispute concerning the interpretation or application of the provisions of an existing contract.

2. Procedure if impasse. An employee representative shall have the right to enter into a written agreement with the state employer setting forth an impasse procedure culminating in a final and binding decision. Such procedure shall be invoked in the event of an impasse over negotiating the terms of an initial or renewed agreement. In the absence of such procedure, either party may request the assistance of the board in settling the impasse by submitting to the board, and the other party, a clear, concise statement of each issue on which an impasse exists, together with a certificate to evidence the good faith of the statement.

3. Assistance. The board may determine, on its own motion, that an impasse exists on any matter in dispute. If the board so determines, it may render assistance by notifying both parties to the dispute of its intent to do so.

§ 771. Public Employment Relations Board

1. Membership. There is created a Public Employment Relations Board which shall consist of 3 members appointed by the Governor, with the advice and consent of the Council, from persons broadly familiar with labor relations. Not more than 2 members shall be from the same political party.

2. Term; chairman; vacancy; expenses. Each member shall serve a term of 6 years, provided that of the members first appointed, one shall be appointed for 2 years, one shall be appointed for 4 years and one shall be appointed for 6 years. The Governor shall designate one member as chairman of the board. Any vacancy that occurs in the membership shall be filled by appointment of the Governor for the unexpired term. Members of the board shall hold no other public office nor public employment. The chairman shall give his whole time to his duties. The chairman shall receive an annual salary to be fixed from the amount available therefor within the appropriation. He shall be allowed expenses actually and necessarily in-

curred by him in the performance of his duties. Members other than the chairman shall be paid at the rate of \$80.00 per day, in addition to an allowance for expenses actually and necessarily incurred by them in the performance of their duties ;

3. Employees. The board shall appoint an executive secretary and such other persons, including but not limited to mediators, members of fact-finding boards and representatives of employee organizations and the state employer to serve as technical advisers to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions, prescribe their duties, fix their compensation and provide for reimbursement of their expenses within the amounts available therefor by appropriation ;

4. Powers. In addition to powers and functions provided in other sections of this chapter the board shall have the power :

A. To establish procedures consistent with this section and to resolve, pursuant to such procedures, disputes concerning the representation status of an employee organization ;

B. To make annual studies and analyses of information relating to conditions of state employment, and to disseminate the results of such studies to interested parties ;

C. To request from the state employer, and such employer shall provide, any assistance, service and data as will aid the board properly to carry out its functions and powers ;

D. To establish, after consulting representatives of employee organizations and the state employers, panels of qualified persons broadly familiar with labor relations to be available to serve as mediators or members of fact-finding boards ;

E. To hold such hearings and make such inquiries as it deems necessary to properly carry out its functions and powers ;

F. To, for the purpose of paragraph E, administer oaths, examine witnesses and documents, take testimony and receive evidence, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed for such purposes by the board. Said subpoenas shall be regulated by and enforced under law ;

G. To make, amend and rescind, from time to time, such rules and regulations, including but not limited to those governing its internal organization, and to exercise such other powers as may be necessary to effectuate the purposes of this chapter.

5. Personnel Law. Notwithstanding any other provisions of law, the Personnel Department shall not supervise, direct or control the board in the performance of any of its functions, duties or powers under this chapter, provided that permanent employees of the board shall not be exempted from any provisions of the personnel law.

§ 772. Resolution of an impasse

If it is called upon, or decides on its own motion to render assistance as provided in section 770, subsection 3, the board shall:

1. **Assist.** Assist the parties to the impasse by appointing a mediator or mediators, broadly representative of the public, from a list it has prepared and maintained. Such appointment shall be made within 5 days after it has been established that an impasse exists. It shall be the function of the mediator or mediators to bring the parties together voluntarily under such conditions as will tend to effectuate settlement of the dispute, but no one shall have any power to compel settlement in mediation proceedings.

2. **Fact-finding board.** If the dispute continues 20 days after it has been established that an impasse exists, appoint, within 5 days, a fact-finding board of not more than 3 persons, broadly representative of the public, from a list of qualified persons that it has prepared and maintained. Such fact-finders shall:

A. Establish times and places of hearings, held where reasonable in the State, and conduct such hearings pursuant to rules established by the board as provided in section 771;

B. If necessary, request the board to issue subpoenas for such hearings;

C. Administer oaths in connection with such hearings;

D. Upon completion of the hearings, but not more than 15 days after their appointment, acting for a majority of their members, make written findings of fact and recommendations for the resolution of the impasse and serve the same on the parties;

E. Send a copy of the findings of fact and recommendations for the resolution of the impasse to the board;

F. Be reimbursed for the cost of the fact-finding by the parties. Such cost shall be divided equally.

3. **Notice.** Notify the parties, within 10 days of the receipt of the findings of fact and recommendations of the fact-finding board, to advise each other in writing as to their acceptance or rejection, in whole or in part, of such findings and recommendations, and, concurrently, to send copies of their decisions to the board. Failure to comply with this procedure shall be deemed a violation of section 773.

4. **Public.** If the impasse remains unsettled 15 days after the transmittal of the findings of fact and any recommendations, cause to be published such findings and recommendations for public information, unless the dispute is referred to final and binding arbitration.

5. **Arbitration.** If the impasse continues 50 days after its existence has been established advise the parties that they may mutually agree to submit their differences to final and binding arbitration. If the parties choose to arbitrate:

A. The arbitration panel shall consist of 3 arbitrators, one selected by each party, and the 3rd selected by the other arbitrators, provided that if the arbitrators chosen by the parties fail to select a neutral arbitrator within a reasonable time, the board shall complete the panel;

B. The arbitration panel shall take whatever actions necessary, including but not limited to inquiries, investigations, hearings, issuance of subpoenas and administration of oaths, in accordance with procedures prescribed by the board to resolve the impasse;

C. If the dispute remains unsettled within 20 days after the appointment of the arbitration panel, such panel shall transmit its findings, and its final and binding decision, to the parties;

D. The parties to the dispute shall enter into an agreement or take whatever action is necessary to effectuate the decision of the arbitration panel;

E. All items requiring an appropriation for implementation shall be subject to the approval of the Legislature.

6. No influence. Not influence the decisions of the parties in regard to resolving the impasse and either party shall be free to take whatever lawful action it deems necessary to resolve such dispute, provided that no action shall involve the disruption of state services within 15 days after the fact-finding board has made public its findings of fact and recommendations for resolution of the impasse as provided in subsection 4.

§ 773. Strikes; rights and prohibitions

1. Strikes. Participation in a strike shall be unlawful for any state employee who:

A. Is not included in an appropriate bargaining unit for which an exclusive representative has been recognized by the state employer or certified by the board; or

B. Is included in an appropriate bargaining unit for which the procedure for resolution of an impasse is by referral to final and binding arbitration.

2. Other. It shall be lawful for an employee who is not prohibited from striking under subsection 1 and who is a member of the appropriate bargaining unit involved in an impasse, to participate in a strike, provided that:

A. The requirements of section 772 have been complied with in good faith; and

B. Fifteen days have elapsed since the fact finding board has made public its findings and recommendations for settlement of the dispute, as provided in section 772, subsection 4; and

C. The exclusive representative of the bargaining unit has given 10 days notice of intent to strike to both the state employer and the board.

3. Investigation. Where the strike occurring, or the one which is about to occur, endangers public health or safety, the state employer may petition

the board for an investigation. If, after such investigation, but no later than 5 days after such a petition is filed, the board finds that there is an imminent or present danger to the public health and safety, it shall set requirements that must be complied with to avoid or remove such imminent or present danger.

4. Unlawful strike. No employee organization shall declare or authorize a strike which is in violation of this section. Where the concerned state employer alleges to the board that such organization has declared or authorized an unlawful strike, it shall investigate the allegation and, after affording an opportunity for the employee organization to be heard, may declare the strike to be unlawful.

5. Injunction; fine. If an employee organization or an employee is found to be violating this section, or if there are reasonable grounds to believe that an employee organization or an employee is about to violate such section, the board shall institute the proper proceedings to enjoin the performance of the prohibited act or practice. Jurisdiction to hear and dispose of all actions under this section is conferred upon the Supreme Judicial Court. Such court may issue any order or decree, by way of injunction or otherwise, as it may deem appropriate to enforce this section, provided that where a fine is imposed pursuant to such section it shall be not more than \$1,000.00 per day for each offense.

§ 774. Unfair labor practices

1. State employer. It shall be an unfair labor practice for the state employer:

A. To interfere with, restrain or coerce employees in the exercise of rights granted under this chapter;

B. To dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, provided that subject to rules and regulations made and published by the board pursuant to section 771 the state employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

C. By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization;

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 exclusive representative of his employees;

F. To violate any written agreement to which he is a party with respect to terms and conditions of employment affecting state employees, including an agreement to arbitrate, or to accept the terms of an arbitration award, where previously the parties have agreed to accept such award as final and binding.

2. Employee organization. It shall be an unfair labor practice for an employee organization:

- A. To restrain or coerce employees in the exercise of any rights guaranteed in this chapter, provided that this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein;
- B. To restrain or coerce the state employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;
- C. To cause or attempt to cause the state employer to discriminate against an employee in violation of this chapter;
- D. To discriminate against an employee with respect to whom membership in such organization has been denied or terminated;
- E. To refuse to bargain collectively with the state employer;
- F. To violate any written agreement to which it is a party with respect to terms and conditions of state employment, including an agreement to arbitrate, or to accept the terms of an arbitration award, where previously the parties have agreed to accept such award as final and binding.

§ 775. Determination of unfair labor practices

If a question arises as to whether an unfair labor practice has been committed, such question may be submitted to the board, and it shall consider the matter in accordance with the following procedure:

1. Reference. When a complaint has been made to the board that an unfair labor practice has been or is being committed, the board shall refer such complaint to its agent.

2. Order. Upon receiving a report from such agent, the board may issue an order dismissing the complaint or may order a further investigation or hearing, which time and place may be changed upon request of one of the parties for good cause.

3. Amendments; answer. Any complaint may be amended at any time before the hearing date. The state employer, or the employee organization or the employee, whichever party is complained of, shall have the right to file an answer to the original or amended complaint within 5 days' notice of such complaint or within such time as the board may allow.

4. Appearance. The state employer, or such employee organization or employee, whichever party is complained of, shall have the right to appear in person to defend against the complaint.

5. Rules of evidence. In any hearing, the board shall not be bound by the technical rules of evidence prevailing in the courts.

6. Transcript. A transcript of testimony taken at any hearing before the board shall be filed with it.

7. Findings of fact; order. If, upon weighing all the testimony, the board determines that an unfair labor practice has or is being committed, it shall state its findings of fact and process an order requiring the state employer, employee organization or employee to cease and desist from such practice and shall take such further affirmative action as will effectuate the policy of this chapter including but not limited to:

A. Withdrawal of recognition or certification of an employee organization established or assisted by any action defined in this chapter as an unfair labor practice;

B. Reinstatement of an employee discriminated against in violation of this chapter with or without back pay; or

C. If either party is found to have refused to bargain in good faith, ordering fact-finding and directing the party found in bad faith to pay full costs of the fact-finding under section 772 resulting from the negotiations in which the refusal to bargain occurred.

8. Dismissal. If, upon consideration of all of the testimony, the board determines that an unfair labor practice has not been committed or is not being committed, it shall state its finding of fact and shall issue an order dismissing the complaint.

9. Petition to court. Any party to the complaint may petition the Supreme Judicial Court for enforcement of a board order rendered under this section.

10. Appeal. An appeal to the Supreme Judicial Court of any order rendered under this section by any party to the complaint may be made, and such court may affirm, reverse or return to the board for further action such order and in so doing, make it a judgment of the court.

Sec. 2. Appropriation. There is appropriated from the General Fund to the Public Employment Relations Board the sum of \$102,000 for the fiscal year ending June 30, 1972, and the sum of \$112,000 for the fiscal year ending June 30, 1973. The breakdown shall be as follows:

	1971-72	1972-73
PUBLIC EMPLOYMENT RELATIONS BOARD		
Personal Services	(7) \$80,000	(7) \$84,500
All Other	22,000	27,500
	<hr/>	<hr/>
	102,000	112,000

STATEMENT OF FACT

It is the intent of this Act to extend collective bargaining rights to state employers and employees and to administrators and personnel of publicly supported Maine institutions of higher education. For further amplification concerning the purposes of this Act, refer to section 1 herein.