

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1014

H. P. 782

House of Representatives, February 21, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Evans of Freedom.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Create a Maine Agricultural Bargaining Board.

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

R. S., T. 13, c. 85, sub-c. II, Article 6, additional. Subchapter II of chapter 85 of Title 13 of the Revised Statutes is amended by adding a new Article 6 to read as follows:

SUBCHAPTER II

AGRICULTURAL MARKETING AND BARGAINING

ARTICLE 6. MAINE AGRICULTURAL MARKETING AND BARGAINING ACT OF 1973

§ 1953. Legislative findings and purpose

Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Furthermore, membership by a farmer in a cooperative organization can only be meaningful, if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this Article is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale and marketing of agricultural products and to provide for the enforcement of such obligation.

§ 1954. Short title

Article 6 shall be known and may be cited as the "Maine Agricultural Marketing and Bargaining Act of 1971."

§ 1955. Definitions

As used in this Article, unless the context otherwise requires, the following words shall have the following meanings.

1. Association of producers. "Association of producers" means any association of producers of agricultural products as defined in section 1822.

2. Board. "Board" means the Maine Agricultural Bargaining Board provided for in this Article.

3. Handler. "Handler" means any person, other than an association of producers, engaged in the business or practice of:

A. Acquiring agricultural products from producers or associations of producers for processing or sale;

B. Grading, packaging, handling, storing or processing agricultural products received from producers or associations of producers;

C. Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or

D. Acting as an agent or broker for a handler in the performance of any function or act specified in paragraph A, B or C.

4. Person. "Person" includes one or more individuals, partnerships, corporations and associations.

5. Producer. "Producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable or nut grower.

6. Qualified association. "Qualified association" means an association of producers accredited in accordance with section 1957.

§ 1956. Maine Agricultural Bargaining Board

1. Board. There is established in the Department of Agriculture a Maine Agricultural Bargaining Board, which shall administer this Article.

2. Membership. The board shall consist of 3 members who shall be appointed by the Governor with the advice and consent of the Council. The original board shall be composed of one member for a one-year term, one member for a 3-year term and one member for a 5-year term. The Governor shall indicate the length of term when making the appointment of the original board. Thereafter, as the term of each member expires, the Governor shall, with the advice and consent of the Council, appoint a successor to serve for a term of 5 years. Any individual chosen to fill a vacancy caused by other than expiration of the term shall be appointed only for the unexpired term

of the member whom he shall succeed. Members shall take the oath of office prescribed for state officers. The Governor shall select one member of the board to serve as chairman.

3. Removal. Members of the board shall be subject to removal by the Governor and Council, upon notice and hearing, for neglect of duty or malfeasance in office but for no other cause.

4. Quorum. A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Two members of the board shall, at all times, constitute a quorum of the board.

5. Expenses. Members of the board shall serve without pay, other than their actual expenses while carrying out the functions of the board.

6. Rules and regulations. The board shall have authority from time to time to adopt, amend and repeal, in the manner prescribed by Title 5, sections 2351 to 2354, such rules and regulations as may be necessary or appropriate to carry out this Article.

§ 1957. Qualification of associations of producers

1. Qualification. Only those associations of producers that have been qualified in accordance with this section shall be entitled to the benefits provided by this Article.

2. Petition. An association of producers desiring qualification shall file with the board a petition for qualification. The petition shall contain such information and be accompanied by such documents as shall be required by the regulations of the board.

3. Public hearing. The board shall provide for a public hearing upon such petition. The board shall qualify such association, if based upon the evidence at such hearing, the board finds:

A. That under the charter documents or the bylaws of the association, the association is directly or indirectly producer-owned and controlled;

B. The association has contracts with its members that are binding under state law;

C. The association is financially sound and has sufficient resources and management to carry out the purposes for which it was organized;

D. The association represents a sufficient number of producers or a sufficient quantity of agricultural products, or both, to make it an effective agent for producers in bargaining with handlers; and

E. The association has as one of its functions acting as principal or agent for its producer-members in negotiations with handlers for prices and other terms of contracts with respect to the production, sale and marketing of their product.

4. Notice. After the board qualifies such association, it shall give notice of such qualification to all known handlers that, in the ordinary course of

business, purchase the agricultural commodities that such association represents.

5. Annual report. A qualified association shall file an annual report with the board in such form as shall be required by the regulations of the board. The annual report shall contain such information as will enable the board to determine whether the association continues to meet the standards for qualification.

6. Revocation. If a qualified association ceases to maintain the standards for qualification set forth in subsection 3, the board shall, after notice and hearing, revoke the qualification of such association.

§ 1958. Bargaining

1. Definition. As used in this Article, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, compensation for commodities produced under contract and other contract provisions relative to the commodities that such qualified association represents and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession.

2. Prior course of dealing. A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer in any 2 of the preceding 5 years.

3. Contracts. Nothing in this Article shall be deemed to prohibit a qualified bargaining association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.

4. —limitation. It shall be unlawful for a handler to negotiate with other producers of a product with respect to the price, terms of sale, compensation for commodities produced under contract and other contract provisions relative to such product while negotiating with a qualified bargaining association able to supply all or a substantial portion of the requirements of such handler for such product.

5. —further limitation. It shall be unlawful for a handler to purchase a product from other producers under terms more favorable to such producers than those terms negotiated with a qualified bargaining association for such product.

6. Investigation. Whenever it is charged that a qualified association or handler refuses to bargain as that term is defined in subsection 1, the board shall investigate such charges. If, upon such investigation, the board considers that there is reasonable cause to believe that the person charged has refused to bargain in violation of this Article, the board shall issue and cause to be served a complaint upon such person. The complaint shall summon the

named person to a hearing before the board or a member thereof at the time and place therein fixed.

7. Hearing. The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise at the hearing and give testimony. In the discretion of the board, or the member conducting the hearing, any person may be allowed to intervene to present testimony. Any hearing shall, insofar as practicable, be conducted in accordance with court rules of evidence.

8. Findings. If, upon a preponderance of the evidence, the board determines that the person complained of has refused to bargain, in violation of this Article, it shall state its findings of fact and shall issue and cause to be served on such person an order requiring him to bargain as that term is defined in subsection 1 and shall order such further affirmative action, including an award of damages, as will effectuate the policies of this Article.

9. Dismissal. If, upon a preponderance of the evidence, the board is of the opinion that the person complained of has not refused to bargain, in violation of this Article, it shall make its findings of fact and issue an order dismissing the complaint.

10. Modification. Until the record in a case has been filed in a court, as provided in section 1959, the board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in a whole or in part, any finding or order made or issued by it.

§ 1959. Enforcement of orders and judicial review

1. Complaint. The board shall have power to complain to the Superior Court for Kennebec County for the enforcement of its orders made under section 1958 and for appropriate temporary relief or restraining order, and shall file in the court the original or certified copy of the entire record in the proceeding, and shall cause notice of such complaint to be served upon such person, and said court shall thereupon have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No objection that has not been urged before the board or the member before whom a hearing was conducted shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, its member, agent or agency, the court may order such additional evidence to be taken before the board, or a member thereof, and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modi-

fied or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final.

2. Appeal. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may appeal such order to the Superior Court for Kennebec County. The aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of such appeal, the court shall proceed in the same manner as in the case of complaint by the board under subsection 1, and shall have the same jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; and the findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall in like manner be conclusive.

3. Stay. The commencement of proceedings under subsection 1 or 2 shall not stay enforcement of the board's decision, but the reviewing court may order a stay upon such terms as it deems proper.

§ 1960. Copy evidence; oaths; subpoenas

The board shall at all reasonable times have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any refusal to bargain. The board is empowered to administer oaths and to issue subpoenas requiring the attendance of witnesses or the production of evidence.

§ 1961. Contempt

In case of contumacy or refusal to obey a subpoena issued to any person, the Superior Court for Kennebec County, upon application by the board, shall have jurisdiction to order such person to appear before the board to produce evidence or to give testimony touching the matter under investigation and any failure to obey such order may be punished by the court as a contempt thereof.

§ 1962. Exemptions

No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

§ 1963. Service

Complaints, orders and other processes and papers of the board may be served personally, by registered mail, by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be paid the same fee and mileage allowance that are paid witnesses in the courts of the United States and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

§ 1964. Antitrust

The activities of qualified associations and handlers in bargaining with respect to the price, terms of sale, compensation for commodities produced under contract or other contract terms relative to agricultural commodities produced by the members of such qualified associations shall be deemed not to violate any antitrust law of this State. Nothing in this Article shall be construed to permit handler to contract, combine or conspire with one another in bargaining with qualified associations.

STATEMENT OF FACT

This bill is intended to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations, to bargain with respect to the production, sale and marketing of agricultural products and to provide for the enforcement of such obligation. Such obligation does not require either party to agree to a proposal or make a concession.