

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1773

H. P. 1390

House of Representatives, April 4, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Bustin of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

**AN ACT Providing Collective Bargaining Rights for Employees of the State
and the University of Maine.**

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

**PROVIDING COLLECTIVE BARGAINING RIGHTS FOR
EMPLOYEES OF THE STATE AND THE UNIVERSITY OF MAINE**

§ 761. Policy

It is the declared policy of the State of Maine and it is the purpose of this chapter to promote the improvement of the relationship between state and University of Maine employees and their employers by providing a uniform basis for recognizing the right of state and University of Maine employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment.

§ 762. Definitions

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

1. **Agent.** In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the

question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

2. Board. "Board" means the Public Employee Relations Board provided in section 769.

3. Employee. "Employee" means any employee of an employer, and shall not be limited to the employees of a particular employer, and shall include any employee of an employer, whether or not in the classified service of the employer, except officials appointed or elected pursuant to a statute to a policy-making position, and shall include any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action.

4. Employer. "Employer" means the State of Maine or University of Maine trustees, social service or welfare agency, public and quasi-public corporation, or other authority or public agency established by law, and any person or persons designated by the employer to act in its interest in dealing with employees.

5. Exclusive representative. "Exclusive representative" means the labor organization which has been certified for the purposes of this chapter by the Public Employee Relations Board as the exclusive representative of the employees in an appropriate unit, or recognized by an employer prior to the enactment of this chapter as the exclusive representative of the employees in an appropriate unit, or subsequently after notice to the employees and interested organizations as provided by rules of the board, upon evidence that the labor organization has been designated as the exclusive representative by a majority of the employees in an appropriate unit.

6. 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, regardless of whether the disputants stand in the proximate relation of employer and employee.

7. Labor organization. "Labor organization" means any organization of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment.

8. Person. "Person" includes one or more individuals, labor organizations, employers, employees, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

9. Supervisor. "Supervisor" 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 responsibly 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.

10. Unfair labor practice. "Unfair labor practice" means any unfair labor practice listed in section 765.

§ 763. Rights of employees

Employees shall have the right of self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion, and shall also have the right to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring as a condition of employment membership in a labor organization or the payment of periodic dues uniformly required as authorized in section 765, subsection 1, paragraph C.

§ 764. Union dues, deduction and authorization

The employer shall, on receipt of the written authorization of an employee, deduct from the pay of said employee any fees designated or certified by the appropriate officer of a labor organization, and shall remit said fees to said labor organization. Where there is an exclusive representative, the employer may not entertain a written or oral authorization on behalf of any other labor organization from an employee in said bargaining unit. Any such assignment shall be irrevocable for a period of not more than one year or beyond the termination date of the applicable collective agreement, whichever occurs later.

§ 765. Unfair labor practices

1. Unfair labor practices. It shall be an unfair labor practice for an employer to:

A. Interfere with, restrain or coerce employees in the exercise of rights guaranteed in section 763;

B. Dominate, interfere or assist in the formation or administration of any labor organization, or contribute financial or other support to it. Subject to rules and regulations made and published by the board pursuant to section 769, subsection 4, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

C. Discriminate in regard to hire or tenure or employment or any term or condition of employment to encourage or discourage membership in any labor organization. Nothing in this chapter or any other statute of this State shall preclude an employer from making an agreement with an exclusive representative, not established, maintained or assisted by any action defined in this subsection as an unfair labor practice, to require as a condition of employment membership therein or the payment of periodic dues uniformly required, on or after the 30th day following the beginning of such employment or on the effective date of such agreement, whichever is the later. No employer shall justify any discrimination against an em-

ployee 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. Discharge or otherwise discriminate against an employee because he has filed a complaint, affidavit, petition or given any information or testimony under this chapter;

E. Refuse to bargain collectively in good faith with an exclusive representative;

F. Fail or refuse to comply with any provision of this chapter.

2. —definition. It shall be an unfair labor practice for a labor organization or its agents to:

A. Restrain or coerce an employee in the exercise of the rights guaranteed in section 763 or an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

B. 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. Refuse to bargain collectively in good faith with an employer, provided it is the exclusive representative.

3. Bargain collectively. For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the employer through its chief executive officer or his designee and the designees of the executive officer or his designee and the designees of the exclusive representative to meet at reasonable times, including meetings in advance of the budget making process, and negotiate in good faith with respect to wages, hours and other terms and conditions of employment or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. The duty to bargain includes the duty to negotiate about matters which are or may be the subject of a regulation promulgated by any employer's agency or other organ of the State or subdivision thereof, and to submit any agreement reached on these matters to the appropriate Legislature, in accordance with section 768, subsection 2.

§ 766. Representatives and elections

1. **Petition.** Whenever, in accordance with such regulations as may be prescribed by the board, a petition has been filed:

A. By a labor organization alleging that 30% of the employees in an appropriate unit wish to be represented for collective bargaining by an exclusive representative, or assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit; or

B. By the employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit;

the board shall investigate such petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

The board may also certify a labor organization as an exclusive representative if it determines that a free and untrammelled election cannot be conducted because of the employer's unfair labor practices.

2. **Ballot.** Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election, in conformity with the rules and regulations of the board.

3. **Appropriate unit.** In order to assure to employees the fullest freedom in exercising the rights guaranteed by this chapter, the board shall decide in each case before it in which the issue is raised the unit appropriate for the purposes of collective bargaining, and shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Supervisors shall not be placed in a bargaining unit which includes nonsupervisory employees. A unit may be found to be the appropriate unit in a particular case, even though some other unit might also be appropriate, or might be more appropriate.

4. **Voting.** An election shall not be directed in any bargaining unit or in any subdivision thereof within which, in the preceding 12-month period a valid election has been held. The board shall determine who is eligible to vote in the election and shall establish rules governing the election. In any election where none of the choices on the ballot receives a majority, but a majority of all votes cast are for representation by some labor organization, a run-off election shall be conducted. A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

§ 767. Unfair labor practice procedure

1. **Complaint; hearing.** If a charge is filed alleging that any employer or other person has engaged in or is engaging in any unfair labor practice, as defined in section 765 and it appears to the agent designated by the board for such purposes that formal proceedings in respect thereto should be instituted, he shall issue and cause to be served upon the charged party a formal complaint and a notice of hearing before the board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than 5 days after the service of said complaint.

A. Any such complaint may be amended by the board at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby. The person so complained of shall be required to file an answer to the original or amended complaint. The board and the person charged shall be parties and shall have the right to appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the member, agent or agency conducting the hearing, or the board any other interested person may be allowed to intervene in the said proceeding and to present testimony. In any hearing the board shall not be bound by the rules of evidence prevailing in the courts.

B. The testimony taken by such member, agent or agency or the board shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and shall issue and cause to be served on such person an order requiring that he cease and desist from these unfair labor practices, and take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. Where an order directs reinstatement of an employee, back pay may be required of the employer or labor organizations, as the case may be, responsible for the discrimination suffered by him. Such order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

C. If upon the preponderance of the testimony taken, the board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then it shall state its findings of fact and shall issue an order dismissing the said complaint. No notice of hearing shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the board, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the Armed Forces, in which event the 6-month period shall be computed from the day of his discharge. No order of the board 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 cause. In case the evidence is

presented before a member of the board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon such parties, or within 20 days after the board may authorize, such recommended order shall become the order of the board and become effective as therein prescribed.

D. If exceptions are filed to the proposed report, the board shall determine whether such exceptions raise substantial issues of fact or law, and shall grant review if it believes such substantial issues have been raised. If the board determines that the exceptions do not raise substantial issues of fact or law, it may refuse to grant review, and the recommended order shall become the order of the board, and become effective as therein prescribed.

2. Injunctive relief. Whenever a complainant alleges that a person has engaged in an unfair labor practice and that it will suffer substantial and irreparable injury if it is not granted temporary relief, the board may petition the Kennebec County Superior Court for appropriate injunctive relief, pending the final adjudication by the board with respect to such matter. Upon filing of any such petition, the court shall cause notice thereof to be served upon the parties, and thereupon shall have jurisdiction to grant such temporary relief or restraining order as it deems just and proper.

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

4. Enforcement. The board or the complaining party shall have the power to petition the Kennebec County Superior Court for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief or permanent relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, enforcing as modified, or setting aside in whole or part the order of the board, provided that the determination by the board that a labor organization has been chosen by a majority of the employees in an appropriate unit shall not be subject to review by the court.

5. Findings. No objection that has not been urged before the board, its member, or agent or agency 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.

6. Additional evidence. 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 or agent or agency, the court may order such additional evidence to be taken before the board, its member or agent or agency, 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 modified 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, except that the same shall be subject to review in accordance with the general court rules of the State.

7. Review. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the Kennebec County Superior Court, by filing in such court, as set forth in subsection 4, within 60 days, a written petition praying that the order of the board be modified or set aside. A copy of such petition shall be forthwith transmitted to the board and thereupon, the aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of such petition, the court shall proceed in the same manner as under subsection 4 and shall grant such temporary relief or restraining order as it deems just and proper, and in like manner make and enter a decree enforcing, modifying, enforcing as modified, or setting aside in whole or in part the order of the board. 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, and the certification by the board that a labor organization is the exclusive representative shall not be subject to review by the court.

8. Stay of board's order. The commencement of proceedings under subsection 4 or 7 shall not, unless specifically ordered by the court, operate as a stay of the board's order.

9. Evidence. In any proceeding for enforcement of review of a board order held pursuant to such subsection 4 or 7, evidence adduced during the representation proceeding pursuant to section 766 shall not be included in the transcript of the record required to be filed under subsections 4 and 7; nor shall the court consider the record of such proceeding.

10. Hearing on petitions. Petitions filed under this chapter shall be heard expeditiously, and, if possible, within 60 days after they have been docketed, by the court to which presented, and shall take precedence over all other civil matters except earlier matters of the same character.

11. Order final. In the event no petition to review or enforce the order of the board is filed within 60 days from the date of the board's order pursuant to subsection 4 or 7, the order shall be final and no review thereof may be had. The board shall thereupon file a petition with the court to enforce the order.

§ 768. Written agreements; appropriations to implement; enforcement

1. **Grievance procedure.** A collective bargaining agreement may contain a grievance procedure culminating a final and binding arbitration of unresolved grievances, including disciplinary grievances and disputed interpretations of agreements. Said agreement shall be valid and enforced by its terms when entered into in accordance with this chapter. Suits for violation of contracts between an employer and a labor organization may be brought in the Kennebec County Superior Court.

2. **Request for funds.** A request for funds, necessary to implement such written agreement and for approval of any other matter requiring the approval of the appropriate legislative body, shall be submitted by the employer to the legislative body. The legislative body may approve or reject such submission, as a whole, by a majority vote of those present and voting on the matter. If the legislative body rejects any part of the submission of the employer, either party may reopen all or part of the entire agreement.

3. **Agreement prevails.** If, upon approval of the legislative body, there is a conflict between the collective bargaining agreement and any rule or regulation adopted by the employer, including civil service or other personnel regulations, or between said agreement and any statute or ordinance adopted by the State or subdivision thereof, the terms of such agreement shall prevail.

§ 769. State Public Employee Relations Board

1. **Board.** There is hereby created the Public Employee Relations Board which shall be composed of 3 members appointed by the Governor, one of whom shall be designated as chairman. The chairman shall be appointed for a term of 5 years, commencing from the date of his appointment. The other members shall be appointed for terms of one and 3 years, respectively, but their successors shall be appointed for terms of 5 years. Two members of the board shall constitute a quorum. Any individual chosen to fill a vacancy in the board shall be appointed only for the unexpired term of the member whom he shall succeed.

2. **Compensation; expenses.** The chairman and members of the board shall receive per diem of \$50 per day. They shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. The chairman shall be responsible for the administrative functions of the board and shall have the authority to appoint such employees as may be necessary to carry out the work of the board.

3. **Powers; subpoena.**

A. To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses, issue subpoenas to require the production of books, papers, records and documents which may be needed as evidence of any matter under inquiry, and may administer oaths and affirmations.

B. In cases of neglect or refusal to obey a subpoena issued to any person, the Kennebec County Superior Court in which the investigations or the

public hearings are taking place, upon application by the board, may issue an order requiring such person to appear before the board and produce evidence about the matter under investigation. A failure to obey such order may be punished by the court as a contempt.

C. Any subpoena, notice of hearing or other process or notice of the board issued under this chapter may be served personally, by registered mail or by leaving a copy at the principal office of the person required to be served. A return, made and verified by the individual making such service and setting forth the manner of such service is proof of service and a returned post-office receipt, when registered or certified mail is used, is proof of service.

All process of any court to which application may be made under this chapter may be served in the county wherein the persons required to be served reside or may be found.

4. Rules and regulations The board shall adopt, promulgate, amend or rescind such rules and regulations as it deems necessary and administratively feasible to carry out this chapter. Public hearings shall be held by the board on any proposed rule or regulation of general applicability designed to implement, interpret or prescribe policy, procedure or practice requirements under this chapter and on any proposed change to such existing rule or regulation. Reasonable notice shall be given prior to such hearings, which shall include the time, place and nature of such hearing and also the terms or substance of the proposed rule or regulation or the changes to such rule or regulation.

5. Expenses. All of the expenses of the board, including all necessary traveling and subsistence expenses incurred by the members or employees of the board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the board or by any individual it designates for that purpose.

§ 770. Mediation and fact-finding

1. Expiration date. At least 30 days prior to the expiration date of any collective bargaining agreement, the parties shall notify the board of the status of negotiations. The board shall assign a mediator upon request of either party or upon its own motion.

2. Petition. If after expiration of an existing collective bargaining agreement, or after 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate fact-finding.

Unless the parties have agreed to some other fact-finding or arbitration procedure, each party shall designate a fact finder within 3 days after the petition for fact-finding has been filed or the board has initiated fact-finding pursuant to subsection 3.

The designated fact finders shall take appropriate action, including the utilization of other agencies or organizations, to attempt to agree upon a 3rd fact

finder who shall serve as a chairman. If no agreement has been reached within 10 days after the petition for fact-finding has been filed, either party may petition the State Mediation and Conciliation Service for a list of 7 qualified, disinterested persons, from which list each party shall alternate in striking 3 names, and the remaining person shall be designated as chairman. This process shall be completed within 5 days of receipt of the list. The parties shall notify the State Mediation and Conciliation Service and the board of the designated fact finder.

3. Board may initiate. If no request for fact-finding is made by either party prior to the expiration of the agreement, or 30 days following certification or recognition of an exclusive representative, the board may initiate fact-finding as provided for in subsection 2.

4. Hearings. The chairman shall immediately establish dates and place of hearings. Upon request of either party or the chairman, the board shall issue subpoenas. The chairman may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the issues in dispute. Upon completion of the hearings, but no later than 20 days from the day of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the employer and the exclusive representative. The chairman may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the chairman shall make the report public. For a period of 60 days from the date either party requests fact-finding or the board initiates fact-finding on its own motion, the employer may not unilaterally change any terms or conditions of employment, and the exclusive representative shall not engage in a strike.

5. Parties. The employer and the exclusive representative shall be the only parties to fact-finding proceedings.

6. Costs. The cost of fact-finding proceedings, including the salary and expenses of the chairman, shall be borne by the board. Each party shall be responsible for the expenses of its designated fact finder.

7. Chairman as fact finder. The parties may agree that the chairman shall serve as the only fact finder.

8. Mediation. Nothing in this section shall be construed to prohibit the fact finder from endeavoring to mediate or resolve the dispute.

9. Voluntary agreement. Nothing in this section shall be construed to prohibit the parties from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration, and if such agreement is reached, said arbitration shall supersede the fact-finding procedures set forth in this section. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

§ 771. Chapter takes precedence

This chapter shall supersede all previous statutes concerning this subject matter and shall preempt all contrary executive orders, legislation, rules or

regulations adopted by the State or the University of Maine or agents such as a personnel board.

STATEMENT OF FACT

The intent of this Act is to provide collective bargaining rights on a uniform basis for State and University of Maine employees.