

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1809

H. P. 1331

House of Representatives, April 2, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Curtis of Orono.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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

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

Sec. 1. 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**

**STATE EMPLOYMENT RELATIONS LAW**

§ 761. Policy

The Legislature declares that it is the policy of the State of Maine and the purpose of this chapter to promote harmonious and cooperative relations between State Government and its employees and to protect the public by assuring effective and orderly operations of government. In this regard, the Legislature finds and declares that:

1. The people of this State have a fundamental interest in the development of harmonious and cooperative relationships between the government and its employees;
2. The denial of the right of state employees to organize or the refusal to accept the principle and procedure of full communication between the state employer and employee organizations can lead to various forms of strife and unrest;
3. The State has a basic obligation to protect the public by assuring at all times the orderly operations and functions of government;
4. There neither is, nor can be, an analogy of status between state employees and private employees, in fact or law, because of inherent differences

in the employment relationship arising out of the unique fact that the state employer was established by and is run for the benefit of all the people and this authority derives not from contract nor the profit motive inherent in the principle of free private enterprise, but from the Constitution, statutes, resolutions, rules and regulations; and

5. The difference between state and private employment is further reflected in the constraints that bar any abdication or bargaining away by the Legislature of its continuing legislative discretion and in the fact that constitutional provisions as to contract, property and due process do not apply to the legislative and employee relationship.

Consequently this policy and the findings set forth herein can best be effectuated by:

1. Creating a Legislature Labor Relations Committee, representing the Legislature, and providing for a Council Legislative Committee, representing the Council of Employee Organizations acting for the state employees, to meet, confer and recommend, either jointly or separately to the Legislature, proposed legislation on labor matters falling solely within the purview of the Legislature including, but not limited to, cost items and statutory changes affecting wages, hours and other terms and conditions of employment;

2. Authorizing the Governor or his designated representatives to meet, bargain collectively and enter into agreements with the Council of Employee Organizations or its representatives on all labor matters affecting the terms and conditions of state-wide employment not otherwise in conflict with the civil service merit system, the philosophy of equal pay for equal work or other provisions of this chapter;

3. Requiring each state employer to meet, bargain collectively and enter into agreements with the exclusive representative on labor matters within the locus of recognition of the state employer providing the subject matter shall be within the means and authority of said employer or appointing authority and providing further no agreement between such unit of government and the employee organization recognized as the exclusive representative by virtue of its appropriate bargaining unit rights shall be in conflict with any principal agreement developed through legislation or at the Governor's level; and

4. Creating a State Employee Relations Board to administer the applicable provisions of this chapter.

## § 762. Definitions

As used in this chapter, unless the text otherwise indicates, the following words and phrases shall have these meanings.

1. **Appropriate bargaining unit.** "Appropriate bargaining unit" shall mean any group formed by state employees pursuant to section 769 and designated to be appropriate for meet and confer, or collective bargaining purposes as provided for in this chapter.

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 mutual performance of the state employer and an exclusive representative or the Council of Employee Organizations to meet at reasonable times, including meetings appropriately related to the state budget-making process, and negotiate in good faith with respect to wages, hours and other terms and conditions of employment within the authority of the state employer, or the negotiation of an agreement, or any question arising thereunder, except that by any such obligation neither party shall be compelled to make a concession.

4. **Board.** "Board" shall mean the State Employee Relations Board created by section 776.

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. **Conference.** "Conference" shall mean the coming together of the Legislature Labor Relations Committee with the Council Legislative Committee to meet, confer and recommend, either jointly or separately to the Legislature, proposed legislation on labor matters falling solely within the purview of the Legislature including, but not limited to, cost items and statutory changes affecting wages, hours and other terms and conditions of employment pursuant to section 774.

7. **Council of Employee Organizations.** "Council of Employee Organizations" shall mean the council established pursuant to section 771 whose duty it shall be to administer, advocate, coordinate and represent, either directly or through representatives and committees of the council's choosing, state-wide employee interests on all matters provided for under this chapter which affect 2 or more certified appropriate bargaining units or the exclusive representatives thereof. It shall be a duty of the council to establish its official position, which shall be the official position taken by its representatives and committees including, but not limited to, the Council Legislative Committee, on all issues which are the subject of legislative conference or collective bargaining as provided for in this chapter.

8. **Council Legislative Committee.** "Council Legislative Committee" shall mean the committee established pursuant to section 772 whose duty it shall be to represent the council in the conferences defined in subsection 6 pursuant to the provisions set forth in section 774.

9. **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.

10. **Exclusive representative.** "Exclusive representative" shall mean the employee organization which has been certified for the purposes of this chap-

ter by the State Employee Relations Board and as a consequence has the sole right to represent the employees in an appropriate bargaining unit pursuant to certification procedures set forth in section 770.

11. Fact-finding. "Fact-finding" shall mean identification of the major issues in a particular dispute, review of the positions of the parties to the dispute, resolution of the factual differences by one or more impartial fact-finders, culminating in written recommendations by the fact-finders for the settlement of the dispute.

12. Impasse. "Impasse" shall mean any condition wherein the state employer and an exclusive representative or the Council of Employee Organizations fail to reach an agreement while bargaining collectively within the authorized scope of such bargaining.

13. Legislature Labor Relations Committee. "Legislature Labor Relations Committee" shall mean the committee formed pursuant to section 773 to engage in the meet and confer procedures prescribed in section 774.

14. Managerial employees. "Managerial employees" shall mean those state employees designated by the state employer pursuant to section 765 and as such considered a part of the state employer's management team in all meet and confer conferences and bargaining negotiations.

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

16. Meet and confer. "Meet and confer" shall mean the condition and mechanism short of bargaining collectively utilized for processing labor matters falling solely within the purview of the Legislature pursuant to section 774.

17. Membership dues deduction. "Membership dues deduction" shall mean the obligation of the state employer to deduct from the salary of a state employee, with his consent, the amount for payment of his membership dues in an employee organization which is the exclusive representative of said employee's appropriate bargaining unit, and the obligation of such state employer to transmit this amount to such organization.

18. Professional employee. "Professional employee" shall mean;

A. Any employee engaged in work:

- (1) Predominately 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 in-

tellectual 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).

19. Service fee. "Service fee" shall mean an assessment on all employees in an appropriate bargaining unit who are not members in good standing of the employee organization certified as the exclusive representative of such unit to help defray the cost of services rendered by the exclusive representative in conferences, bargaining collectively and contract administration pursuant to section 768.

20. State employee. "State employee" shall mean any person who is employed by the State of Maine, the University of Maine, Maine Maritime Academy, Maine-New Hampshire Interstate Bridge Authority, Maine Turnpike Authority and similar entities created and funded from time to time by the State, but shall not include those employees excluded under section 765.

21. State employer. "State employer" shall mean the State of Maine, the University of Maine, Maine Maritime Academy, Maine-New Hampshire Interstate Bridge Authority, Maine Turnpike Authority and similar entities funded from time to time by the State as well as those individuals who represent such entities under section 765.

22. Supervisor. "Supervisor" shall mean any employee having authority, in the interest of the state employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or adjust their grievances or effectively to recommend such actions, if in connection with the foregoing, the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of the work, including whether or not a major portion of the supervisory employee's working time is spent as a part of a crew or team with no supervisory employees, shall also be considered.

#### § 763. Employer rights

Nothing contained in this chapter shall interfere with the rights of the state employer, in accordance with applicable law, rules and regulations to:

1. Carry out this statutory mandate and goals assigned to any unit or subordinate unit of government in the most efficient manner possible; and
2. Manage employees and in this regard to:

- A. Hire, promote, transfer, assign or retain such employees ;
- B. Suspend, demote, discharge or take any appropriate disciplinary action against employees for just cause ;
- C. Lay off employees under conditions where continuation of work would be inefficient and nonproductive.

#### § 764. Employee rights

It is recognized that state employees, except as otherwise provided in this chapter, have and are protected in the exercise of the right, without fear of penalty, reprisal or intimidation, to form, join or assist any lawfully established employee organization for the purpose of conferring or bargaining collectively on questions of wages, salaries and other terms and conditions of their employment subject to these provisions.

1. Employees shall be free to refrain from any or all such activities except to the extent of making payment of service fees established pursuant to a collective bargaining agreement negotiated in accordance with this chapter by the exclusive representative of their appropriate bargaining unit.

2. The freedom of employees to form, join or assist any employee organization shall be recognized as extending to participating in the management of such organization and acting for the organization in the capacity of a representative including representing its views to officials of the executive branch of government, the Legislature or other appropriate authority.

3. The rights of this section do not extend to participating in the management of an employee organization or acting as a representative of any such organization, where such participation or activity might result in a conflict of interest or otherwise be incompatible with law or the official duties of an employee.

4. Nothing in this chapter shall prevent any state official from meeting to discuss terms and conditions of employment with any minority employee organization or other groups of employees under his jurisdiction, provided that the exclusive representative received advanced notice of the meeting and is permitted to attend, and further provided that any change in the terms and conditions of employment is effected only through negotiations with the exclusive representative.

#### § 765. Employees excluded

Elected officials, officials appointed by the Governor, members of commissions or boards, persons appointed or otherwise designated to perform a special investigation or tasks involving managerial functions, Members of the Legislature, and officers and employees of the Legislature shall not be eligible for the benefits of this chapter, it being further provided that:

1. Each appointing authority of a unit or subordinate unit of State Government, consisting of 200 or less state employees eligible for the benefits of this chapter, may designate not more than 10%, but not less than 2 persons of his unit or subordinate unit as managerial employees; each appointing

authority of any unit or subordinate unit consisting of more than 200 but less than 500 employees eligible for the benefits of this chapter may designate 30 persons as managerial employees; and each appointing authority of any unit or subordinate unit consisting of more than 500 employees eligible for the benefits of this chapter may designate 30 persons plus one additional person for each full 100 employees in excess of 500 as managerial employees.

A. Each appointing authority shall make such designation annually and file it in writing no later than the last day of October of each year with the State Employee Relations Board indicating the designated employees' names, social security numbers, position numbers and official titles, accompanied by a statement that such employees are designated as managerial employees until revoked or otherwise set aside under this chapter.

B. An employee so designated shall have all the rights and benefits afforded any other employee under this chapter, except that no managerial employee may become or continue as an officer, or organizer directly or indirectly, nor assume any responsible role or the role of an advocate of any employee organization; providing further that passive membership in any such organization or organizations shall not be prohibited.

2. Managerial employees shall at all times be considered as integral parts of the management process in furthering employer-employee relations and as such, in addition to the regular duties and responsibilities with which they are charged, shall be obligated to protect privileged information and to advocate the official view and position of the principal officer of the unit or subordinate unit of their employment. Such obligation shall include at all times the duty to conduct assigned aspects of employer-employee relations to the best interests of the employer, State Government and the welfare of the State's citizens in accordance with the applicable laws, rules and regulations of the State.

#### § 766. Obligation to confer

It shall be the mutual obligation of the Legislature Labor Relations Committee, representing the Legislature, and the Council Legislative Committee, representing the Council of Employee Organizations on behalf of the state employees, to meet, confer and recommend, either jointly or separately to the Legislature, proposed legislation on labor matters falling solely within the purview of the Legislature including, but not limited to, cost items and statutory changes affecting wages, salaries and other terms and conditions of employment.

#### § 767. Obligation to bargain

The State as the employer, through the Governor or his designated representatives, the governing body or appointing authority of any board, department, agency or other state entity whose principal officer is a state employee and an appointing authority, and the state employees through the several exclusive representatives of the appropriate bargaining units, or the Council of Employee Organizations, whichever is applicable, shall have the mutual obligation to meet at reasonable times, including meetings appropriately re-



lated to the employer's budget preparation processes, and bargain collectively in good faith on all matters that may properly come before them including, but not limited to, wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written agreement reached if requested by either party, providing the subject matter of the negotiation is within the authority of the employer at such level of collective bargaining, and providing further that such obligation to bargain does not compel either party to agree to a proposal or require the making of a concession.

Where an employer's governmental authority is insufficient to bind the State, joint agreement may be reached between the employer and the exclusive representative or the Council of Employee Organizations, whichever is applicable, to include or support such agreement or agreed to objective at the properly authorized decision making level.

#### § 768. Right of representation

State employees within an appropriate bargaining unit shall have the right to be represented by an employee organization or the Council of Employee Organizations, whichever is applicable, for the purposes of meeting and conferring, bargaining collectively, and contract administration in accordance with this chapter. An employee organization and its representatives shall have the right to be recognized and certified as the exclusive representative in an appropriate bargaining unit, which shall include the subordinate units thereof, and if so recognized and certified the exclusive representative shall be entitled to:

1. Membership dues deduction within such unit;
2. Assess a service fee to defray the costs of services rendered in such conferences, collective bargaining negotiations and contract administration within that unit. The fee shall be deducted by the state employer from the pay of each employee who does not pay membership dues to the exclusive representative within said unit. The fee shall be computed on a prorated basis, utilizing as the divisor the total number of the employees in the unit or subordinate unit thereof benefiting from the services rendered irrespective of their membership status, and remitted to the exclusive representative, provided that such employer shall not be obligated to make said deduction until the exclusive representative has submitted an itemized statement of the costs incurred supported by the pro rata computations.

#### § 769. Appropriate bargaining unit

1. State employees within any one of the following categories shall constitute an appropriate bargaining unit:
  - A. Nonsupervisory employees in blue collar positions;
  - B. Supervisory employees in blue collar positions;
  - C. Nonsupervisory employees in white collar positions;
  - D. Supervisory employees in white collar positions;

- E. Faculty of the University of Maine;
- F. Nonsupervisory employees of the University of Maine in blue collar positions;
- G. Supervisory employees of the University of Maine in blue collar positions;
- H. Nonsupervisory employees of the University of Maine in white collar positions;
- I. Supervisory employees of the University of Maine in white collar positions;
- J. Teachers employed by the Department of Educational and Cultural Services;
- K. Professional and scientific employees other than registered professional nurses;
- L. Registered professional nurses;
- M. Nonprofessional hospital and institutional workers;
- N. Clerical and stenographic employees;
- O. Correctional officers employed by the Department of Mental Health and Corrections;
- P. State Police employed by the Department of Public Safety; and
- Q. Wardens employed by the Department of Inland Fisheries and Game and the Department of Sea and Shore Fisheries.

2. Because of the nature of the work and the essential nature of certain occupations which require specialized training, subsection 1, paragraphs K to Q are designated as optional appropriate bargaining units. Employees in any of these optional units may either vote for such separate units or for inclusion in the respective basic units, designated in subsection 1, paragraphs A to J. If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included within such unit by mutual majority agreement among supervisory and nonsupervisory employees each voting as a separate entity, within the unit; if supervisory employees are excluded, the appropriate bargaining unit for such supervisory employees shall be the unit designated in subsection 1, paragraphs B, D, G, or I, whichever is applicable.

3. No employee excluded under section 765, part-time employees working less than 20 hours per week, temporary employees whose appointments are of less than 6 months' duration, or a member of the State's organized militia shall be included in any appropriate bargaining unit or be entitled to coverage under this chapter.

4. Where any controversy arises over the provisions or interpretations of this section, the State Employee Relations Board shall make an investiga-

tion and, after hearing upon due notice, make a final and binding determination on the applicability of this section to specific positions and employees.

§ 770. Representation and elections

1. Whenever, in accordance with such regulations as may be prescribed by the State Employee Relations Board, a petition is filed:

A. By an employee organization alleging that 30% or more of the employees in an appropriate bargaining unit as specified in section 769 wish to be represented to meet and confer, and collective bargaining purposes by an exclusive representative, or asserts that the designated exclusive representative is no longer the representative of the majority of the employees in the unit; or

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

the board shall investigate such petitions and if it has reasonable cause to believe that a question of representation exists, it shall provide an appropriate hearing after due notice to all concerned parties.

2. 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, and the employee organization receiving the majority of votes cast shall be certified as the exclusive representative of all of the employees in said unit except that, should the majority of employees vote not to be represented by any employee organization, no employee organization shall be certified as the exclusive representative of the unit; providing further that:

A. Ballots shall be structured to allow eligible voters to choose between participating employee organizations or to choose, as another option, not to be represented by any employee organization;

B. Positions on the ballot shall be determined by chance;

C. In the event that none of the choices on the ballot receives 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;

D. No election shall be directed in an appropriate bargaining unit or subordinate unit thereof in which a valid election has been held during the preceding 12-month period; and

E. No election shall be directed in any bargaining unit or subordinate unit 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.

**§ 771. Council of Employee Organizations**

1. The exclusive representative of each appropriate bargaining unit shall be entitled to representation in the Council of Employee Organizations.

2. The executive secretary, State Employee Relations Board, shall annually convene and assist the exclusive representatives in forming the Council of Employee Organizations to serve for the next succeeding year or until their successors are elected, providing further:

A. The council shall elect such officers as it may deem necessary for efficient operation;

B. Each exclusive representative shall be entitled to appoint 3 council members;

C. The 3 council members from each unit shall between them have the right, at all times, to one vote for every certified member of their unit, however such 3 members must cast their votes as an individual block.

**§ 772. Council Legislative Committee**

The exclusive representatives, in January of all odd number years, shall each appoint from its representation in the Council of Employee Organizations, a council member to serve on the Council Legislative Committee for a period of 2 years or until the concerned exclusive representative appoints a successor. Each member of the committee shall have the right, at all times, to one vote for every certified member of his unit.

**§ 773. Legislature Labor Relations Committee**

1. The President of the Senate, in January of all odd number years, shall appoint 6 members of the Senate to serve on the Legislature Labor Relations Committee for a period of 2 years or until their successors have been appointed. Not more than 4 such appointees at any given time shall be of the same political party.

2. The Speaker of the House, in January of all odd number years, shall appoint 9 members of the House to serve on the Legislature Labor Relations Committee for a period of 2 years or until their successors have been appointed. Not more than 6 such appointees at any given time shall be of the same political party.

3. The President of the Senate and the Speaker of the House shall, by virtue of their offices, be members of the Legislature Labor Relations Committee with full power to vote but shall be ineligible to serve as chairman of that committee nor shall they be counted in determining the presence of a quorum.

4. A quorum to transact business of the Legislature Labor Relations Committee shall be 5 appointed members including the chairman who shall be elected by a majority vote of the committee to serve for a period of 2 years or until his successor is elected.

### § 774. Legislative meet and confer procedures

Within 30 calendar days of the convening of each regular session of the Legislature, the Legislature Labor Relations Committee, on behalf of the Legislature, and the Council Legislative Committee, on behalf of the Council of Employee Organizations acting for the state employees, shall meet, confer and recommend, either jointly or separately to the Legislature, proposed legislation on labor matters falling solely within the purview of the Legislature including, but not limited to, cost items and statutory changes affecting wages, salaries and other terms and conditions of employment subject to the following provisions.

1. The Governor may participate directly, or may designate not more than 2 employees of the State to represent him at all such conference sessions. Such representatives may participate and engage in the conference process and shall at the pleasure of the Governor declare their position on any matter which may be under discussion or presented to the Legislature as provided. Neither the Governor nor any designee of the Governor shall have any vote on any issue before the committees.

2. The agreements reached shall be reduced to writing in the form of legislative bills, which shall be submitted by the Legislature Labor Relations Committee to the Legislature within 10 legislative days of the date on which such agreements are reached. In the case of those issues upon which agreements have not been arrived at by the first day of April in odd number years, the parties within 5 additional legislative days shall submit to the Legislature through the Legislature Labor Relations Committee, in the form of a series of bills, their respective positions.

3. The rules of cloture shall not apply to bills submitted to the Legislature in accordance with the terms of this chapter.

### § 775. Written agreements

1. Each employee organization recognized as the exclusive representative of an appropriate bargaining unit or the Council of Employee Organizations, whichever is applicable, shall have the right to enter into collective bargaining agreements with the state employer on all matters not otherwise in conflict with this chapter.

2. The state employer shall have the right to enter into collective bargaining agreements with each employee organization recognized as the exclusive representative of an appropriate bargaining unit or the Council of Employee Organizations, whichever is applicable, on all matters not otherwise in conflict with this chapter.

3. Any agreement reached shall not require either party to make a concession.

4. A collective bargaining agreement may contain a grievance procedure culminating in 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.

5. A collective bargaining agreement may contain an impasse procedure culminating in final and binding arbitration. Such procedure shall be invoked in the event of an impasse over negotiating the terms of a renewal agreement. In the absence of such a procedure, either party may request the assistance of the State Employee Relations Board in settling an impasse by submitting to that board and the other party to the impasse a clear, concise statement of each issue on which an impasse exists, together with a certificate to evidence the good faith of the statement.

6. Agreements shall, upon the request of either party, or in the case of an impasse as otherwise resolved through the State Employee Relations Board, or as a result of a decision by an arbitration tribunal, be reduced to writing and shall be binding upon the parties provided that no agreement shall be for a period greater than 24 consecutive months nor extend over into the next succeeding legislative biennium.

7. Each exclusive representative of an appropriate bargaining unit shall have the right to enter into agreements with other such exclusive representatives, providing said agreements shall not be inconsistent with the rules and regulations adopted by the State Employee Relations Board or this chapter. The board shall have the authority, upon joint petition of all parties to any such agreement, to resolve any differences resulting from interpretation or implementation of such agreements but no decision of the board shall be binding unless all parties shall have agreed to be bound by the decisions of the board.

#### § 776. State Employee Relations Board

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

2. Each member shall serve a term of 6 years or until his successor is appointed, provided that of the members initially 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 to serve as chairman. Any vacancy that occurs in the membership shall be filled by appointment of the Governor to serve for the unexpired term.

3. Members of the board shall hold no other public office nor public employment. The chairman shall receive an annual salary for full-time service to be fixed from the amount available therefor within the appropriation. He shall be allowed expenses actually and necessarily incurred by him in the performance of his official duties. Members other than the chairman shall each be paid at the rate of \$50 per day for each day work, in addition to an allowance for expenses actually and necessarily incurred by each of them in the performance of their official duties.

4. 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, the latter to serve as technical advisors to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions. The board shall prescribe such appointees' duties, fix their compensation and provide for reimbursement of their actual and necessary expenses within the amounts available therefor by appropriation.

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

A. Establish procedures consistent with this section and to resolve, pursuant to such procedures, disputes concerning the representational status of any employee organization;

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

D. Establish, after consulting exclusive representatives and the state employer, separate lists of qualified persons broadly familiar with labor relations in the State Government sector to be available to serve as mediators or fact-finding boards on the one hand, and arbitration boards on the other, both such lists to be maintained as separate and distinct entities, it being further provided that no qualified person shall be assigned to both lists at any given time;

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

F. 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 purpose by the board. Said subpoenas shall be regulated by and enforced under the law;

G. 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.

6. Notwithstanding any other provisions of the Personnel Law, no state department or agency shall supervise, direct or control the board in the performance of any of its functions, duties or powers under this chapter.

#### § 777. Mediation and fact-finding

1. At least 30 days prior to the expiration date of any collective bargaining agreement, the parties to the agreement shall notify the board of the status of

negotiations. The board shall assign a mediator, from the list it has prepared and maintained as specified in section 776, upon request of either party or upon its own motion.

2. 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 parties to the agreement, not otherwise covered by this chapter, either party may petition the board to initiate fact-finding or the board may initiate fact-finding upon its own motion.

3. Unless the parties have agreed to some other fact-finding or arbitration procedure, each party shall designate a fact-finder, from the list prepared and maintained by the board as specified in section 776, within 3 days after the petition for fact-finding has been filed with the board or initiated by it on its own motion. The designated fact-finders shall take appropriate action 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 or the board has initiated fact-finding upon its own motion, the board shall propose 7 fact-finders from the list it has prepared and maintained, and each party shall alternate in striking 3 names from the proposed 7 and the remaining person shall be designated as a fact-finder and chairman.

4. The chairman shall immediately establish dates and places 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 date of appointment, the fact-finders shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the parties to the agreement. The chairman may make this report public 5 days after the report 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 or the Council of Employee Organizations shall not engage in a strike.

5. The employer and the exclusive representative or the Council of Employee Organizations shall be the only parties to fact-finding proceedings.

6. The costs of fact-finding proceedings, including the salary and expenses of the chairman, shall be borne by the board, except that each party shall be responsible for the salary and expenses of its designated fact-finder

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

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



9. 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.

#### § 778. Grievance representation

No employee shall be represented through any employee organization on any grievance matter or other personal complaint within his bargaining unit, except through the exclusive representative or the Council of Employee Organizations, or he represents himself directly or through an attorney-at-law.

An employee seeking relief from any grievance or other complaint shall be free to elect and utilize the grievance procedure promulgated under chapter 63 and related sections of the statutes, or he may elect such procedure as may be contained in a grievance procedure established in a collective bargaining agreement covering the unit within which the employee is employed. An employee making either such election shall be ineligible to subsequently utilize the alternate procedure in seeking redress on the same grievance or complaint.

The state employer shall give the exclusive representative of the unit wherein an employee has requested relief from any grievance or other complaint notice in advance of the meeting or meetings called to hear the grievance, and such exclusive representative or the Council of Employee Organizations shall be entitled to attend said hearings.

Grievance settlements involving any change in the terms and conditions of employment shall only be effected through negotiations with the exclusive representative or the Council of Employee Organizations.

#### § 779. Employer unfair labor practices

1. It shall be an unfair labor practice for the state employer or its representatives to:

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

B. Dominate or interfere with the formation, existence or administration of any employee organization or the Council of Employee Organizations, or contribute financial or other support to them, provided that subject to rules and regulations made and published by the State Employees Relations Board pursuant to section 776, the 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 hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization;

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

E. Refuse to meet and confer, bargain collectively or negotiate in good faith with a recognized employee organization or the Council of Employee Organizations or their representatives selected for the purpose;

F. Refuse to discuss grievances with the exclusive representative or the Council of Employee Organizations;

G. Violate any written agreement to which the employer is a party with respect to terms and conditions of employment affecting the 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;

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

#### § 780. Employee organization unfair labor practices

1. It shall be an unfair labor practice for any employee organization or the Council of Employee Organizations to:

A. 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. Restrain or coerce the state employer in the selection of his representatives for the purpose of meeting and conferring or of collective bargaining or the adjustment of grievances;

C. Cause or attempt to cause the state employer to discriminate against any employee in violation of this chapter;

D. Discriminate against an employee with respect to whom membership in such employee organization has been denied;

E. Refuse to meet and confer, bargain collectively or negotiate in good faith with the state employer or its representatives selected for the purpose by the state employer;

F. Violate any written agreement to which the employee organization or the Council of Employee Organizations is a party which affects the 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;

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

#### § 781. 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 State Employee Relations Board and it shall consider the matter in accordance with the following procedure.

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

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

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

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

7. 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 offender or his representatives 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. Suspension or withdrawal of recognition or certification for a certain time period not in excess of 60 days of an employee organization established or assisted by any action defined in this chapter as an unfair labor practice;

B. Withdrawal of recognition of an employee organization if such organization is found to have refused to confer or bargain collectively in good faith;

C. Advise the appointing authority, board or commission, or the Governor, whichever is the immediate higher or appropriate authority, of unfair labor practice charges and findings against any state employer, deputy, named managerial employee or employees or representative or agent thereof, and provide such authority or the Governor with recommendations for corrective action and request such authority or the Governor to take appropriate action should the person or persons concerned fail to comply.

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

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

8. 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. Any party to the complaint may petition the Superior Court for enforcement of a board order rendered under this section.

10. An appeal to the Superior 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.

§ 782. Chapter takes precedence

This chapter shall take precedence over all conflicting statutes concerning this subject matter and shall preempt all contrary executive orders, legislation, rules or regulations adopted by the State or any agency thereof, including but not limited to those promulgated by the Department of Personnel

§ 783. Chapter inoperative

If any provision of this chapter jeopardizes the receipt by the State of any federal grant-in-aid or other federal allotment of federal money, the provision shall, insofar as the federal funds are jeopardized, be deemed to be inoperative.

**Sec. 2. Appropriation.** There is appropriated from the General Fund to the State Employee Relations Board the sum of \$214,000 to carry out the purposes of this chapter. The breakdown shall be as follows:

	1973-74		1974-75
STATE EMPLOYEE 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 intention of this Act to grant the right to meet and confer with the Legislature Labor Relations Committee, representing the Legislature on matters solely within its purview, to state employees and employees of state funded institutions of higher education through their exclusive representatives and, further, to extend collective bargaining rights to state employers and employees, including, but not limited to, those directly employed by the State as well as those employed by state funded institutions of higher education.