

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1811

H. P. 1346

House of Representatives, April 3, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Smith of Exeter.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Regulating Agricultural Labor Practices.

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

R. S., T. 26, chapter 9, subchapter II-A, additional. Title 26 of the Revised Statutes is amended by adding a new chapter 9, subchapter II-A, to read as follows:

CHAPTER 9
SUBCHAPTER II-A
AGRICULTURAL LABOR ACT

§ 931. Title

This chapter shall be cited as the "Maine Agricultural Labor Act."

§ 932. Definitions

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

1. Employee. "Employee" means any individual employed by an employer as defined in subsection 2 in agricultural work and shall not be limited to the employees of a particular employer unless this chapter explicitly states otherwise. "Employee" shall not include any individual employed in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, independent contractors, or any confidential or clerical employees, guards and supervisors, or any individual employed by any person who is not an employer as defined in subsection 2.

2. Employer. "Employer" means any person who regularly employs any person in agricultural work, and any person acting as an agent of an employer. 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.

3. Labor dispute. "Labor dispute" means any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or process or details of collective bargaining or designation of representatives.

4. Labor organization. "Labor organization" means any organization of any kind or any agency or employee representation committee or plan in which employees employed by any person participate, and which exists for the purpose, in whole or in part, of dealing with employers or persons concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

5. Person. "Person" means one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

6. Representative. "Representative" means any individual or labor organization or agent thereof.

7. Secondary boycott. "Secondary boycott" means engaging in any of the acts defined in section 937, subsection 1, paragraphs G, H and I.

8. 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 responsibility to direct them, or to adjust other 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.

§ 933. Board

1. Membership. There is hereby created a board to be known as the "Maine Agricultural Labor Board," in this chapter called the "board," which shall be composed of 5 members, appointed by the Governor with the advice and consent of the Council. Two of the members shall be appointed from a list of names submitted by labor organizations. Two shall be appointed from a list of names submitted by agricultural producer groups. One member shall be a representative of the public and shall be selected from a mutually agreed upon list of not less than 3 persons submitted to the Governor by the 4 other members of the board. The term of the public representative and one of the labor representatives and one of the management representatives shall be for 2 years; the term of the other labor representative and the other management representative shall be for 4 years; and the term of the chairman shall be for 3 years. Thereafter all terms shall be for a period of 4 years. Each member of the board shall be eligible for reappointment and shall hold office

until his successor is appointed and qualified. In the event of vacancy, the Governor shall, within one month, appoint a successor to fill the unexpired term of his predecessor. All appointments to the board shall be made in conformity with the foregoing plan.

2. Vacancy; quorum; seal. A vacancy on the board shall not impair the right of the remaining members to exercise all the powers of the board, and 3 members of the board shall constitute a quorum. The board may adopt an official seal and prescribe the purposes for which it shall be used.

3. Report. The board shall, at the end of every year, make a report in writing to the Governor, stating the work it has done in hearing and deciding cases and otherwise, and it shall sign and report in full an opinion in every case decided by it.

4. Compensation. Each member of the board shall be paid \$25 for each day in which he has actually attended a meeting of the board officially held, in addition to reimbursement for necessary expenses actually incurred as a member of the board. The members of the board shall receive any number of daily payments for official meetings of the board actually attended.

5. Fund. There is hereby created in the State Treasury a fund to be known as the "Maine Agricultural Labor Fund." Reasonable and necessary expenses of the board and its employees shall be paid from the fund upon vouchers signed by the chairman or any 3 members of the board.

6. Personnel. The board may employ clerical and other employees as necessary.

7. Office; hearings. The principal office of the board shall be in Augusta, but it may meet and exercise any or all of its powers at any other place within the State. The board may, by one or more of its members or by such board agents as it may designate, conduct in any part of this State any proceeding, hearing, investigation, inquiry or election necessary to the performance of its functions. A member who participates in any such proceeding shall not be disqualified from subsequently participating in a decision of the board in the same case.

8. Rules and regulations. The board shall have the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out this Act. Rules and regulations under this Act shall be promulgated and governed according to Title 5, chapter 303.

§ 934. Employee rights

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to be employed by any employer willing to employ them.

§ 935. Employer rights

An employer has the right to manage his operations, to hire employees from any lawful source, to decide what crops or other products to produce, to de-

termine methods and equipment of machinery to be used, to use any lawful pesticides, herbicides or fungicides, to contract work out, for himself or members of his family or his supervisors, to work on his own operations or to discontinue or sell his operations.

This section shall not prevent an employer from negotiating with regard to work safety, job protection and other terms and conditions of employment.

§ 936. Unfair labor practices

1. Employer. It shall be an unfair labor practice for an employer :

A. To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 934 ;

B. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it ;

C. To discriminate in regard to hiring or tenure of employment or any term or condition of employment so as to encourage or discourage membership in any labor organization which is in compliance with section 937, subsection 1, paragraph L ;

D. To refuse to bargain collectively with the representative of his employees ; provided that said representative is currently certified by the board pursuant to section 939 ; and provided further that said representative is in compliance with section 937, subsection 1, paragraph L ;

E. To violate the terms of a collective bargaining agreement.

§ 937. —labor organizations

1. List. It shall be an unfair labor practice for a labor organization or its agents or for individuals :

A. To cause or attempt to cause an employer to discriminate against an employee in violation of section 936, subsection 1, paragraph C ;

B.

(1) To restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances, or

(2) To refuse to bargain collectively with an employer, provided that it is the representative of his employees as provided in section 939 ;

C. To hinder or prevent, by mass picketing, threats, intimidations, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance ;

D. To take unauthorized possession of an employer's property or to hold or damage or destroy the property of the employer with the intent of com-

PELLING the employee to accede to demands, conditions, and terms of employment, including the demand for collective bargaining;

E. Other than employees of the employer with whom a primary dispute exists, and not more than an equal number of persons, other than such employees, representing a labor organization, to picket or otherwise patrol at premises owned or controlled by such employer;

F. To engage in a strike against an employer during a critical period of planting or harvesting of crops, or during the period specified in section 940, subsection 2;

G. To picket or otherwise patrol where such conduct is at a business establishment other than the premises owned or controlled by the employer with whom a primary dispute exists, except as provided for in section 938;

H. To engage in, or to induce or encourage any person to engage in, a refusal by strike or otherwise in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any agricultural commodity after the commodity has left the farm of its origin. Nothing contained in this paragraph shall be construed to limit the right of an employee to engage in a lawful primary strike or lawful primary picket against his employer.

I. To threaten, coerce or restrain any person, where in either case an object thereof is:

(1) Forcing or requiring any employer or self-employed person to join any labor or employer organization;

(2) Forcing or requiring any person to enter into an agreement, express or implied, whereby such person ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any agricultural commodity; or

(3) Forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in any agricultural commodity produced by any other employer or any other person, or to cease doing business with any employer or any other person; or

(4) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under section 939; or

(5) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization, trade, craft or class, unless such employer is failing to conform to an order or certification of the board determining the bargaining representative for employees performing such work;

(6) Nothing contained in this paragraph shall be construed to limit the right of an employee to engage in a lawful primary strike or lawful picket against his employer;

J. To picket or cause to be picketed, or threaten to picket, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select a labor organization as their collective bargaining representative:

(1) Where the employer has lawfully recognized another labor organization;

(2) Where within the past 12 months an election under section 939 has been conducted;

K. To violate the terms of a collective bargaining agreement;

L. To fail or refuse:

(1) To have a secret ballot election of all officers not less frequently than every 4 years; or

(2) To annually submit a list of names and addresses of its officers to the board, to prepare and submit to the board an annual financial report, to have and submit to the board current written bylaws and constitution. Such documents shall be available for inspection and copying by the public at the offices of the board at reasonable hours. Such documents shall also be available for inspection and copying by any employee in a bargaining unit represented by said labor organization, at the offices of said labor organization, at reasonable hours.

§ 938. Prohibitions

1. **Publicity.** For the purposes of section 937, subsection 1, paragraphs G, H and I, nothing contained therein shall be construed to prohibit publicity, including picketing, at a business establishment other than the premises owned or controlled by the employer with whom a primary dispute exists, for the purpose of truthfully advising the public that a commodity is produced by an employer with whom a labor organization has a primary dispute and is distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by another person, other than the primary employer, in the course of his employment to refuse to pick up, deliver, manufacture, process or transport any agricultural commodity, or not to perform any services at any establishment of the secondary employer;

2. **Views.** The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice or constitute grounds therefor, if such expression contains no threat of reprisal or force or promise of benefit. A statement of fact by either a labor organization or an agricultural employer relating to existing or proposed terms, tenure or conditions of employment with the employer shall not be considered to constitute a threat of reprisal or force or promise of benefit. Nothing in this Act shall be deemed to prohibit speech protected by the Constitution of the United States or of the State of Maine.

§ 939. Power

1. **Hearing.** When a petition is filed with the board, together with recent authorizations signed by 30% or more of present employees of a particular employer, the board shall set a hearing. The hearing shall be held to determine whether a unit is appropriate for the purposes of collective bargaining and whether to conduct an election. The board shall give proper consideration as to whether permanent and seasonal employees shall be included in the same bargaining unit, and the board shall determine eligibility of employees to vote in an election.

2. **Petition for election.**

A. By a labor organization or its agent; or

B. By an employer alleging that one or more labor organizations have presented to him a claim to be recognized as the representative of his employees, or that he has a reasonable doubt that the recognized representative continues to represent the majority of the employees in the unit; or

C. By an employee or employees asserting that the labor organization which has been certified or is currently recognized by their employer as the bargaining representative no longer represents the majority of the employees in the unit.

3. **Representatives.** Representatives designated or selected for the purposes of collective bargaining by the majority of employees in an appropriate unit shall be the exclusive representatives for the purposes of collective bargaining, provided that any employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted so long as the adjustment is not inconsistent with the express terms of the collective bargaining agreement.

4. **Elections.** No election shall be conducted in any bargaining unit within which, in the preceding 12-month period, a valid election shall have been held. In an election where none of the choices on the ballot receives a majority, a run-off shall be conducted. The ballot shall provide for a selection between the 2 choices receiving the largest and 2nd largest number of valid votes cast in the election. In preparing a ballot for secret election, the board shall include upon the ballot the name or names of labor organizations and a choice labeled "no union."

5. **Compliance.** The board shall not process a petition filed by a labor organization unless it finds that said labor organization has complied with the terms of section 937, subsection 1, paragraph L.

6. **Voting.** The board shall not conduct an election unless it finds that a representative number of employees in that unit are employed at the time of the election. Any election will not be considered valid unless at least 50% of the eligible employees cast a ballot. A labor organization must have over 50% of the valid votes cast to be certified as the representative for purposes of collective bargaining.

§ 940. Bargain collectively

1. Definition. For the purposes of this chapter, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and places and confer in good faith with respect to wages, hours and other terms and conditions of employment in an attempt to reach a written agreement, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

2. Induce strikes; lock-outs. A labor organization, which is the representative of employees of an employer pursuant to section 939, shall not engage in or induce or encourage a strike or other concerted refusal to work by employees, nor shall an employer lock out his employees so represented, unless, in either case, the following procedure is first complied with:

A. Where there is in effect a collective bargaining agreement, the party desiring the termination or modification of said agreement serves a written notice upon the other party 60 days prior to the expiration date thereof, or in the event such agreement contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification;

B. If the 60 days' notice has been given and the party desiring a change in existing terms or conditions of employment offers to meet and confer with the other party for the purpose of negotiating a new agreement or an agreement containing modifications, and within 30 days notifies the board of a labor dispute and its willingness to accept mediation, provided no agreement has been reached by that time, the board, at the request of either party, shall appoint a person to mediate the dispute. The mediator shall not have authority to compel either party to agree to a proposal or to make a concession, but he shall have the authority, at his discretion, to make public the position of the parties.

3. Penalty. Any employee who engages in a strike within the period specified in subsection 2 shall lose his status as an employee of the employer engaged in the particular labor dispute.

§ 941. Further powers

1. Prevention. The board is empowered and directed as provided to prevent any employer, labor organization or individual from engaging in any unfair labor practice. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by the board as provided in this Act.

2. Investigation; appeal. Whenever a charge has been made that any employer, labor organization or individual has engaged in or is engaging in any unfair labor practice, the board, or any agent of the board, shall investigate the charge, and shall have the power to issue and cause to be served upon such person a complaint; provided that no complaint shall issue based upon any unfair labor practice occurring more than 3 months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom such charge is made. The procedure for filing a com-

plaint and answer and the conduct of a hearing upon the complaint shall be in accordance with such rules and regulations as the board may adopt, following the Administrative Code. Any party may appeal from a decision of the board to the Superior Court for Kennebec County; and the decision of the Superior Court shall be final, except that the same shall be subject to review by the Supreme Judicial Court on appeal by any party. Appeals shall be heard expeditiously and shall be considered and determined upon the transcript filed. Upon the filing of the record in the Superior Court, the same shall be heard with the greatest possible expedition and shall take precedence over all other matters except matters of the same character.

3. Injunction. The board may seek an injunction from the Superior Court for Kennebec County against any unfair labor practice after a complaint of such practice has been issued by the board.

4. Penalty. Any person who shall willfully resist, prevent, impede or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this Act, or who shall in any manner interfere with the free exercise by employees of their right to select representatives in an election directed by the board pursuant to section 939, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or by both.

5. Public record. Subject to the rules and regulations of the board, the complaints, orders and testimony relating to a proceeding instituted by the board under section 941 may be made a matter of public record. All proceedings pursuant to this section shall be open to the public.

6. Subpoenas. In any proceeding before the board under this Act, the board may issue subpoenas for the attendance of witnesses, or for the production of documents, and may examine witnesses under oath, provided that:

A. Upon written application of a party to a proceeding, the board shall issue subpoenas for the attendance of witnesses or for the production of documents. A subpoena so issued shall show on its face the name and address of the party at whose request the subpoena was issued;

B. A person who fails to obey the subpoena of the board may be punished as for contempt of court on application to the Superior Court for the county in which such failure occurs, by the board or by the party requesting issuance of the subpoena;

C. Witnesses who are summoned before the board or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses subpoenaed in the District Courts of the State.

§ 942. Jurisdiction

Notwithstanding any other provision of law, the Superior Court for Kennebec County shall have jurisdiction to enjoin or restrain any acts or conduct alleged to be violative of section 936 or section 937 in any case in which there are reasonable grounds to believe that an unfair labor practice is occurring and that substantial and irreparable injury to perishable agricultural products

will be unavoidable if such acts or conduct are not immediately terminated. Application for such injunction or restraining order may be made by the board or by any person aggrieved or injured by such acts or conduct and shall be made in the same manner as provided by law in other cases in which such relief may be granted; provided, that any such injured or aggrieved person shall, prior to the application for such relief, give notice in writing to the board of his intention to proceed under this section; and, providing further that such notice shall be deemed complete upon mailing to the board at its principal office. The court shall consider any such application forthwith and give it priority over all other cases under this Act except cases of like character. No injunction or temporary restraining order issued ex parte shall continue in effect for longer than 72 hours from issuance, but the same may be continued upon hearing. It shall not be necessary that a charge be filed under section 941, subsection 2, as a prerequisite to jurisdiction by the court.

Any person aggrieved or whoever is injured by reason of conduct in violation of sections 936 and 937 may bring an action to recover actual damages therefor within 3 months after such acts or conduct occur. Such damages may include loss of a crop or loss of a market. It shall not be necessary that a charge be filed under section 941, subsection 2, as a prerequisite to jurisdiction by a court.

§ 943. Application

This Act shall not apply to employees of the Federal Government nor employees of the State or political subdivisions of the State.

STATEMENT OF FACT

This bill is intended to deal with the labor relations problems peculiar to agriculture in the event that agricultural labor should become organized.