

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2027

H. P. 1606

House of Representatives, June 12, 1973

Reported by Mr. Brown from Committee on Labor and printed under
Joint Rules No. 18.

E. LOUISE LINCOLN, Clerk

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, or

any individual already afforded collective bargaining rights under the National Labor Relations Act.

2. Employer. "Employer" means any person who employs on a regular or seasonal basis 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 any employee or 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. 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 for 4-year terms. The board shall consist of the members of the Public Employees Labor Relations Board and the Chairman of the Public Employees Labor Relations Board shall be the chairman of the Maine Agricultural Labor Board. Agricultural management shall be represented by a representative who shall be the 4th member of the board, whose initial term shall be 3 years and all subsequent terms shall be 4 years. Agricultural labor shall be represented by a representative who shall be the 5th member of the board, whose initial term shall be 2 years and all subsequent terms shall be 4 years.

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, on or before the 1st of July of every year, make a report in writing to the Governor and Council stating its activities for the previous year.

4. Compensation. Each member of the board shall be paid in an amount and method commensurate with the procedures provided by the Public Employees Labor Relations Board as provided under Title 26, section 968.

5. Personnel. Administrative responsibilities of the board shall be the responsibility of the staff of the Public Employees Labor Relations Board and such additional personnel as may be subsequently deemed necessary by the Maine Agricultural Labor Board.

6. 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.

7. Rules and regulations. The board from time to time shall adopt such rules of procedure as it deems necessary for the orderly conduct of its business and for carrying out the purposes of this Act. Such rules shall be published and made available to all interested parties.

§ 934. Employee rights

Employees shall have the right to join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining.

§ 935. Employer rights

An employer has the right to manage and schedule his operations, to use any lawful pesticides, herbicides or fungicides, 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—employer

It shall be an unfair labor practice for an employer:

A. To interfere with, intimidate, restrain, coerce or discriminate against 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.

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 940.

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

§ 937. Unfair labor practices—employees

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, paragraph C;

B. To restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

C. To refuse to bargain collectively with an employer, provided that it is the representative of his employees as provided in section 940.

D. To hinder or prevent, by mass picketing, unlawful threats, intimidations, force or unlawful 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;

E. To take unlawful unauthorized possession of an employer's property or to hold or damage or destroy the property of the employer with the intent of compelling the employee to accede to demands, conditions, and terms of employment, including the demand for collective bargaining;

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 941, 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 939;

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 940; 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;

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 940 has been conducted;

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

§ 938. Reports

Any labor organization shall annually submit a list of names and addresses of its officers to the board, and shall have and submit to the board its current bylaws and constitution. Such documents shall 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.

§ 939. Prohibitions

1. **Publicity.** For the purposes of section 937, 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 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.

§ 940. 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 or its designee shall conduct a hearing the purposes of which shall be to determine an appropriate unit for the purposes of collective bargaining. If such a unit is determined, the board or its designee shall determine eligibility of employees to vote in a bargaining agent election. Any appeals of decisions rendered under this section shall be heard by the board, but the election shall proceed pending the appeal.

2. Petition for election. A petition for an election may be filed:

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;

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, said assertion being substantiated by at least a 30% showing of the employees in the bargaining unit petitioning for a decertification election.

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 and is made in the presence of a representative of the labor organization.

4. Elections. No election shall be conducted in any bargaining unit within which, in the preceding 12-month period, a valid election for certification or attempted certification shall have been conducted. Where there is a valid collective bargaining agreement in effect, no question concerning unit or representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement. 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 938.

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

§ 941. Bargain collectively

1. Definition. For the purposes of this chapter, to bargain collectively is:

A. To meet at reasonable times;

B. To meet within 10 days after the receipt of written notice from the other party requesting a meeting for collective bargaining purposes, providing that the parties have not otherwise agreed in a prior written contract;

C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance procedures;

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed 3 years.

2. Induce strikes; lock-outs. A labor organization, which is the representative of employees of an employer pursuant to section 940, 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 agree-

ment containing modifications, and within 30 days notifies the board of a labor dispute, provided no agreement has been reached by that time, the board may, or, 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.

C. Arbitration. If the parties are unable to resolve their dispute under subsection 2, paragraph B, they may mutually agree upon an arbitrator to settle the dispute. If they are unable to agree upon an arbitrator to settle the dispute within 5 days after one of the parties proposes the arbitration process, then, each party to the dispute will select an arbitrator and the selected arbitrators will select an additional arbitrator to serve as chairman of an arbitration panel. The decision of the arbitrator or the arbitration panel in any labor dispute shall be binding only during a critical period of planting or harvesting of crops at such a time as is defined by section 937, paragraph F of this Act.

§ 942. 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 complaint 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. Any aggrieved party may file a complaint alleging an unfair labor practice under this Act by causing a copy thereof to be served upon the person or persons alleged to have committed said act and by filing a copy of the complaint with the board. After the complaint has been filed with the board and the complaining party has established that the person or persons alleged to have committed the unfair labor practice have received a copy thereof, the board shall give adequate time for the respondents to reply to said complaint, after which the board may hold a hearing to determine the substance of the complaint. No party shall file a complaint for any unfair labor practice occurring more than 6 months prior to the filing of the complaint.

3. Either party may seek a review by the Superior Court of a decision of the Public Employees Labor Relations Board. Such review shall be sought in accordance with Rule 80B of the Rules of Civil Procedure. Any Justice of the Superior Court shall render a pro forma decree and cause all interested parties to be notified. Such decree shall be enforceable by the Superior Court by any suitable process. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in an action in which equitable relief is sought, duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of

fact found by said board. Upon any appeal therefrom the proceedings shall be the same as in appeals in actions in which equitable relief is sought and the law court may, after consideration, reverse or modify any decree so made by a justice based upon erroneous ruling or finding of law.

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 940, 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 under section 942 shall be made a matter of public record.

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;

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;

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.

§ 943. 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 942, 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 942, subsection 2, as a prerequisite to jurisdiction by a court.

§ 944. Application

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

§ 945. Construction and severability

The provisions of this chapter shall be severable and if any phrase, clause, sentence or provision of this chapter is declared to be contrary to the Constitution of this State or of the United States, the applicability thereof to any person, government, agency or circumstances is held invalid, the validity of the remainder of this chapter and the applicability thereof to any person, government, agency or circumstance shall not be affected thereby.

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.