

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 827

S. P. 243

In Senate, February 26, 1975

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Curtis of Penobscot.

(Cosponsor: Senator Pray of Penobscot).

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT Extending Collective Bargaining Rights to  
University of Maine Employees.

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

26 MRSA c. 12 is enacted to read:

CHAPTER 12

UNIVERSITY OF MAINE LABOR RELATIONS ACT

§ 1021. Purpose

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

§ 1022. Definitions

As used in this chapter, the following terms shall, unless the context requires a different interpretation, have the following meanings.

1. Bargaining agent. "Bargaining agent" means any lawful organization, association or individual representative of such organization or association, which has as one of its primary purposes the representation of employees in their employment relations with employers and which has been certified by the executive director of the Public Employees Labor Relations Board.

2. Board. "Board" means the Public Employees Labor Relations Board as defined in section 968, subsection 1.
3. Board of Trustees. "Board of Trustees" means the Board of Trustees of the University of Maine.
4. Classified employee. "Classified employee" means any employee not engaged in professional work as defined in subsection 7.
5. Cost items. "Cost items" means the provisions of a collective bargaining agreement which require specific appropriations by the Legislature.
6. Executive Director. "Executive Director" means the Executive Director of the Public Employees Labor Relations Board as defined in section 968, subsection 2.
7. Professional employee. "Professional employee" means any employee engaged in work:
  - A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - B. Involving the consistent exercise of discretion and judgment in its performance;
  - C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and
  - D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual 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.
8. Regular employee. "Regular employee" means any professional or classified employee who occupies a position that exists on a continual basis.
9. Supervisory employee. "Supervisory employee" means any employee whose principal work tasks are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, in applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.
10. University. "University" means all campuses or units of the university, represented by the Board of Trustees or its designee. In the furtherance of this chapter, the university shall be considered as a single employer and employment relations, policies and practices throughout the university shall be as consistent as practicable. It is the responsibility of the Board of Trustees or its designee to negotiate collective bargaining agreements and to

administer such agreements. To coordinate the employer position in the negotiation of agreements, the Legislative Council or its designee shall maintain close liaison with the Board of Trustees or its designee relative to the negotiation of legislative cost items in any proposed agreement. The Board of Trustees or its designee is responsible for the employer functions of the university under this chapter and shall coordinate its collective bargaining activities with campuses or units on matters of university concern.

II. University employee. "University employee" means any regular employee of the University of Maine performing services within a campus or unit, except any person:

- A. Appointed to office pursuant to statute;
- B. Appointed by the Board of Trustees as a vice-president, dean, director or member of the chancellor's immediate staff;
- C. Whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the university; or
- D. Employed in his initial 6 months of employment.

#### § 1023. Right of University employees to join labor organizations

No one shall directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against university employees or a group of university employees in the free exercise of their rights, hereby given, voluntarily to join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining, or in the free exercise of any other right under this chapter.

#### § 1024. Bargaining unit

1. Legislative intent. It is the express legislative intent that, in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a university system-wide basis with one unit for each of the following occupational groups:

- A. Faculty;
- B. Professional and administrative staff;
- C. Clerical, office, laboratory and technical;
- D. Service and maintenance;
- E. Supervisory classified; and
- F. Police.

It is intended that Cooperative Extension Service employees be included in appropriate units.

2. Assignment to bargaining units. In the event of a dispute over the assignment of jobs or positions to a unit, the executive director shall examine

the community of interest, including work tasks among other factors, and make an assignment to the appropriate statutory bargaining unit set forth in subsection 1.

3. Additional bargaining units. Notwithstanding subsection 1, the Legislature recognizes that additional or modified university system-wide units may be appropriate in the future. Therefore, the employer or employee organizations may petition the executive director for the establishment of additional or modified university system-wide units. The executive director shall determine the appropriateness of such petitions, taking into consideration the community of interest and the declared legislative intent to avoid fragmentation whenever possible and to insure employees the fullest freedom in exercising the rights guaranteed by this chapter.

#### § 1025. Determination of bargaining agent

1. Voluntary recognition. Any employee organization may file a request with the university alleging that a majority of the university employees in an appropriate bargaining unit as established in section 1024 wish to be represented for the purpose of collective bargaining between the university and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the university unless the university desires that an election determine whether the organization represents a majority of the members in the bargaining unit. In the event that the request for recognition is granted by the university, the executive director shall certify the organization so recognized as the bargaining agent.

#### 2. Elections.

A. The executive director of the board, upon signed request of the university alleging that one or more university employees or employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of university employees, or upon signed petition of at least 30% of a bargaining unit of university employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members of the bargaining unit.

B. The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the university employees within the unit, together with a choice for any university employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the university employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the university as the sole and exclusive bargaining agent for

all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director as not representing a majority of the unit.

C. Whenever 30% of the employees in a bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth.

D. No question concerning representation may be raised within one year of a certification or attempted certification. 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.

#### § 1026. Obligation to bargain

1. Negotiations. It shall be the obligation of the university and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

A. To meet at reasonable times:

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided 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 arbitration, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession;

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation, but not to exceed 2 years;

E. To submit cost items for inclusion in the Governor's budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, the agreement shall be returned to the parties for further bargaining; and

F. To participate in good faith in the mediation and arbitration procedures required by this section.

#### 2. Mediation.

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and employees or their representatives through mediation.

B. Mediation procedures, as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Public Employees Labor Relations Board or its executive director.

C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Public Employees Labor Rela-

tions Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions.

D. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged.

### 3. Arbitration.

A. At any time after the initiation of mediation procedures pursuant to subsection 2, either party, or the parties jointly, may petition the board to initiate arbitration procedures. On receipt of the petition, the executive director shall within a reasonable time determine if an impasse has been reached. If he so determines, he shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties, within 10 days after the issuance of the order, have not selected an arbitrator or a Board of Arbitration, the executive director shall then order each party to select one arbitrator and the 2 arbitrators so selected shall select a 3rd neutral arbitrator. If the 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the executive director shall submit identical lists to the parties of 5 or more qualified arbitrators of recognized experience and competence. Each party shall have 7 days from the submission of the list to delete any names objected to, number the remaining names indicating the order of preference and return the list to the executive director. In the event a party does not return the list within the time specified, all parties named therein shall be deemed acceptable. From the arbitrators who have been approved by both parties and pursuant to the order of mutual preference, the executive director shall appoint a neutral arbitrator. If the parties fail to agree upon any arbitrators named, or if for any other reason the appointment cannot be made from the initial list, the executive director shall then submit a 2nd list of 5 or more additional qualified arbitrators of recognized experience and competence from which they shall alternately strike names until a single name is left, who shall then be appointed by the executive director as the neutral arbitrator.

B. Within 10 days after receipt of the order of the executive director requiring arbitration, the certified bargaining agent may serve notice upon the executive director and the university that the arbitration shall be advisory and non-binding and that said agent reserves the right to engage in a strike after the advisory decision of the arbitrators has been submitted; provided that a restraining order or temporary or permanent injunction may be granted in a case involving a strike by a certified bargaining agent arising out of or in connection with a negotiations impasse only on the basis of findings of fact made by the Superior Court, after due notice and hearing prior to the issuance of such restraining order or injunction, that the commencement or continuance of such strike poses a clear and present danger to the public health and safety which in light of all relevant circumstances it is in the best public interest to prevent, provided that any restraining order or injunction issued by a court for this reason shall prohibit only such specific act or acts as shall be expressly determined in said findings

of fact to pose such clear and present danger and shall remain in effect only for so long as such clear and present danger continues to exist.

C. In reaching a decision under this section, the arbitrators shall consider the following factors:

- (1) The interests and welfare of the students and the public and the financial ability of the university to finance the cost items proposed by each party to the impasse;
- (2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the wages, hours, and working conditions of other employees performing similar services in public and private employment competing in the same labor market;
- (3) The over-all compensation presently received by the employees, including direct salary and wage compensation, vacation, holidays, life and health insurance, retirement and all other benefits received;
- (4) Such other factors not confined to the foregoing, which are normally and traditionally taken into consideration in the resolution of disputes involving similar subjects of collective bargaining in public higher education.
- (5) The need of the university for qualified employees;
- (6) Conditions of employment in similar occupations outside the university;
- (7) The need to maintain appropriate relationships between different occupations in the university;
- (8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities.

D. In the event that the certified bargaining agent has not served notice of advisory arbitration pursuant to paragraph B with respect to controversies over salaries, retirement plan and insurance, the arbitrators will recommend terms of settlement and may make findings of fact. Such recommendations and findings shall be advisory and shall not be binding upon the parties. The determination by the arbitrators on all other issues shall be final and binding on the parties.

E. The arbitrators shall have a period of 30 days from the termination of the hearing in which to submit their report to the parties and to the board, unless the aforesaid time limitation shall be extended by the executive director.

4. **Costs.** The costs for the services of the mediator shall be paid by the board. The costs of the neutral arbitrator, including per diem expenses and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any arbitration proceedings are conducted, shall be shared equally by the parties to the proceedings. All other costs shall be assumed by the party incurring them. The services of the Maine Board of Arbitration and Conciliation shall be available to the parties without cost.



§ 1027. Prohibited acts of the university; university employees and university employee organizations

1. University prohibitions. The university, its representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023;

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment;

C. Dominating or interfering with the formation, existence or administration of any employee organization;

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

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 1026;

F. Blacklisting of any employee organization or its members for the purpose of denying them employment.

2. University employee prohibitions. University employees, university employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023 or the university in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

B. Refusing to bargain collectively with the university as required by section 1026;

C. Engaging in:

(1) A work stoppage, slowdown or strike except as provided in section 1026;

(2) The blacklisting of the university for the purpose of preventing it from filling employee vacancies.

3. Negotiation of union security. Nothing in this chapter shall be interpreted to prohibit the negotiation of union security, excepting closed shop.

4. Violations. Violations of this section shall be processed by the board in the manner provided in section 1029.

§ 1028. Rule making procedure and review of proceedings

1. Rule making procedure. Proceedings conducted under this chapter shall be subject to the rules and procedures of the board promulgated under section 968, subsection 3.

2. Review of representation proceedings. Any person aggrieved by any ruling or determination of the executive director under sections 1024 and 1025 may appeal, within 15 days of the announcement of the ruling or determination, to the Public Employees Labor Relations Board. Upon receipt of such an appeal, the board shall within a reasonable time, hold a hearing, having first caused 7 days' notice, in writing, of the time and place of such hearings to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. Such hearings and the procedures established in furtherance thereof shall be in accordance with section 968. Decisions of the board made pursuant to this subsection shall be subject to review by the Superior Court in the manner specified in section 972.

### § 1029. Prevention of prohibited acts

1. Board power to prevent prohibited acts. The board is empowered, as provided, to prevent any person, the university, any university employee, any university employee organizations or any bargaining agent from engaging in any of the prohibited acts enumerated in section 1027. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

2. Complaints. The university, any university employee, any university employee organization or any bargaining agent which believes that any person, the university, any university employee, any university employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. Upon filing a complaint, the complaining party shall be responsible for service of a copy thereof, within 3 working days, upon the party against whom such charge is made. Upon receipt of such complaint, the executive director shall serve upon the complained-of party and upon the complaining party a notice of hearing before the board, said notice to designate the time and place of hearing, provided that no hearing shall be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of shall have the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in said proceeding and to present testimony.

3. Board action after hearing and argument. After hearing and argument, if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall, in writing, state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon such party an order requiring such party to cease and desist from such prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or dismissed, or the payment to him of any back pay, if such individual was suspended or dismissed for cause.

4. Dismissals. After hearing and argument, if, upon a preponderance of the evidence received, the board shall not be of the opinion that the party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall, in writing, state its findings of fact and the reasons for its conclusions and shall issue an order dismissing said complaint.

5. Failure to comply with board order. If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, said party fails to comply with the order of the board, then the party in whose favor the order operates or the board may file a civil action in the Superior Court in Kennebec County, to compel compliance with the order of the board. In such action to compel compliance, the Superior Court shall not review the action of the board other than to determine questions of law. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

6. Simultaneous injunctive relief. Whenever a complaint is filed with the executive director of the board alleging that the university has violated section 1027, subsection 1, paragraph F or alleging that a university employee or university employee organization or bargaining agent has violated section 1027, subsection 2, paragraph C, the party making the complaint may simultaneously seek injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to such matter.

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Public Employees Labor Relations Board by filing a complaint in accordance with Rule 80B of the Maine Rules of Civil Procedure, provided the complaint shall be filed within 15 days of the effective date of the decision. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party of interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it deems just and proper; provided that the board's decision or order shall not be stayed, except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record shall include all documents filed in the proceeding and the transcript, if any. After hearing, which shall be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified, or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact shall be final unless shown to be clearly erroneous. Any appeal to the law court shall be the same as an appeal from an interlocutory order under subsection 6.

8. Judicial proceeding involving injunctive relief. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, subsections 5 and 6 shall apply, except that neither an allegation nor proof of

unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction.

§ 1030. Hearings.

1. Conduct of hearings. Hearings conducted by the board shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

2. Power of chairman. The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

§ 1031. Scope of binding contract arbitration

A collective bargaining agreement between the university and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the specific terms of collective bargaining agreement. An arbitrator with the power to make binding decisions pursuant to any such provisions shall have no authority to add to, subtract from or modify the collective bargaining agreement.

§ 1032. Suits by and against unincorporated employee organizations

In any judicial proceeding brought under this chapter or to enforce any of the rights guaranteed by this chapter, any unincorporated employee organization may sue or be sued in the name by which it is known.

§ 1033. Review of arbitration awards

1. Court review. Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. Such review shall be sought in accordance with Rule 80B of the Maine Rules of Civil Procedure.

2. Determination final on questions of fact. In the absence of fraud, the binding determination of an arbitration panel or arbitrator shall be final upon all questions of fact.

3. Power of reviewing court. The court may, after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action.

§ 1034. Separability

1. Severability. If any clause, sentence, paragraph or part of this chapter, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such

judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this chapter would have been adopted had such invalid provisions not been included.

2. No restriction on eligibility for federal grant-in-aid or assistance programs. Nothing in this chapter or any contract negotiated pursuant to this chapter shall in any way be interpreted or allowed to restrict or impair the eligibility of the university or any of its campuses or units in obtaining the benefits under any federal grant-in-aid or assistance programs.

#### STATEMENT OF FACT

The purpose of this bill is to provide for the extension of collective bargaining rights to employees of the University of Maine. Collective bargaining rights have previously been extended to state, municipal and other public employees in the State. This bill will accord to employees of the University of Maine rights commensurate with those of other public employees.

The bill recognizes the right of university employees to organize for purposes of representation and collective bargaining. It provides procedures for determination and certification of employees' bargaining agents. It provides for centralization of the university's bargaining functions. It requires the parties to bargain over wages, hours, working conditions and contract grievance arbitration. It provides for the resolution of negotiation impasses through mediation and arbitration. After agreement by the parties, cost items requiring specific legislative approval are to be submitted for inclusion in the Governor's budget. The bill further provides protection to the parties against certain prohibited acts. Administration of the Act would be under the Public Employees Labor Relations Board.

The bill defines certain system-wide units as the appropriate bargaining units, with provision for modification of the units in the future if appropriate. This bill also permits the employees' bargaining agent to reserve the right to strike after completion of mediation and advisory arbitration procedures, subject to the right of the Superior Court to enjoin a strike under certain conditions. The bill also would make clear the intent to permit the negotiation of union security.