

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 473

H. P. 348

House of Representatives, February 16, 1977

Referred to the Committee on Agriculture. Sent up for concurrence and 1,800 copies ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Carroll of Limerick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Amend the Maine Agricultural Marketing and Bargaining Act
of 1973.**

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

Sec. 1. 13 MRSA § 1953, as enacted by PL 1973, c. 621, § 1, is amended to read:

§ 1953. Legislative findings and purpose

Because agricultural products are produced and services relative to the production of such commodities are performed by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Furthermore, membership by a farmer in a cooperative organization can only be meaningful, if a handler of agricultural products or of services relative to the production of such commodities is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this Article is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, quantity, price, sale and marketing and delivery of agricultural products and services relative to the production of such commodities and to provide for the enforcement of such obligation.

Sec. 2. 13 MRSA § 1955, sub-§ 3, ¶ A, as enacted by PL 1973, c. 621, § 1, is amended to read:

A. Acquiring agricultural products or services relative to the production of such commodities from producers or associations of producers for processing or sale;

Sec. 3. 13 MRSA § 1955, sub-§ 3, ¶ C, as enacted by PL 1973, c. 621, § 1, is amended to read:

C. Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product or with respect to services relative to the production of such commodities ; or

Sec. 4. 13 MRSA § 1956, sub-§ 3, as enacted by PL 1973, c. 621, § 1, is amended to read:

3. Removal. Members of the board shall be removed by the ~~Commissioner of Agriculture~~ **Governor** upon notice and hearing for neglect of duty or malfeasance in office but for no other cause.

Sec. 5. 13 MRSA § 1957, sub-§ 3, ¶ E, as enacted by PL 1973, c. 621, § 1, is amended to read:

E. The association has as one of its functions acting as principal or agent for its producer-members in negotiations with handlers for prices, quantity, terms of sale, compensation for services and other contract provisions and other terms of contracts with respect to the production, sale and, marketing and delivery of their product products owned or produced by the producer members.

Sec. 6. 13 MRSA § 1958, sub-§ 1, as enacted by PL 1973, c. 621, § 1, is amended to read:

1. Definition. As used in this Article, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, **quantity to be marketed and delivered**, terms of sale, compensation for commodities produced or sold, or both, **and for services relative to the production of such commodities** under contract and other contract provisions relative to the commodities that such ~~qualified association represents to the production, sale and marketing of~~ **products owned or produced by the producer-members** and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession.

Sec. 7. 13 MRSA § 1958, sub-§ 2, as enacted by PL 1973, c. 621, § 1, is amended to read:

2. Prior course of dealing. A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer **or used the services of such producer** in any 2 of the preceding 3 years, provided that the sale by a handler of his business shall not negate any prior course of dealing that producers have had with this business.

Sec. 8. 13 MRSA § 1958, sub-§ 4, as enacted by PL 1973, c. 621, § 1, is amended to read:

4. —limitation. It shall be unlawful for a handler to negotiate with other producers of a product with respect to the price, terms of sale, compensation for commodities produced or sold, or both, under contract or for services relative to the production of such commodities, and other contract provisions relative to such product the production, delivery, sale and marketing of products owned or produced by the producer members, while negotiating with a qualified bargaining association able to supply all or a substantial portion of the requirements of such handler for such product.

Sec. 9. 13 MRSA § 1958, sub-§ 5, as enacted by PL 1973, c. 621, § 1, is amended to read:

5. —further limitation. It shall be unlawful for a handler to purchase a product or services relative to the production and delivery of such product from other persons under terms more favorable to such persons than those terms negotiated with a qualified bargaining association for such product, or such services unless such handler has first offered to purchase said product or to contract for such services under said more favorable terms from the members of the qualified association of producers and said members have failed to supply the required product or service within a reasonable time according to said more favorable terms.

Sec. 10. 13 MRSA § 1963, 1st ¶, as enacted by PL 1973, c. 621, § 1, is amended to read:

In any proceeding before the board under this Act, the board may issue on its own motion or the chairman of the board may issue on his own motion subpoenas for the attendance of witnesses, or for the production of documents and may examine witnesses under oath ~~provided that~~.

Sec. 11. 13 MRSA § 1965, sub-§ 2, ¶ G, as enacted by PL 1973, c. 621, § 1, is amended to read:

G. To exercise coercive pressure by picketing, patrolling or otherwise on business establishments other than the premises owned or controlled by the handler in order to cause such parties to cease doing business with such handler.

Sec. 12. 13 MRSA § 1965, sub-§§ 3-11 are enacted to read:

3. Investigation. Whenever it is charged under oath that a qualified association or handler has engaged in unfair practices as that term is defined in this section, the board shall investigate such charges. If, upon such investigation, the board considers that there is reasonable cause to believe that the person charged has engaged in unfair practices in violation of this Article, the board shall issue and cause to be served a complaint upon such person. A copy of the complaint shall be served on each alleged violator and that complaint shall contain a short and plain statement of the alleged violation or violations. The complaint shall summon the named person to a hearing before the board or a member thereof within 15 days of receipt of service and at the place therein fixed.

4. **Hearing.** The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person with legal counsel if so desired or to be represented by legal counsel at the hearing and give testimony. At the discretion of the board, any person may be allowed to intervene to present testimony. At such hearings, a record of all proceedings shall be maintained and common law or statutory rules of evidence shall apply insofar as practicable, and the board shall request that the Attorney General, or any attorney in his department designated by him, be present at such hearings and shall advise the board on procedure and on the admissibility of any evidence.

5. **Findings.** If, upon a preponderance of the evidence, the board determines that the person complained of has engaged in unfair practices in violation of this Article, it shall state its findings of fact and shall issue and cause to be served on such person an order requiring him to cease the violation and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this Article.

6. **Dismissal.** If, upon a preponderance of the evidence, the board is of the opinion that the person complained of has not committed a practice in violation of this Article, it shall make its findings of fact and issue an order dismissing the complaint.

7. **Modification.** Until the record in a case has been filed in a court, as provided in subsection 8, the board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

8. **Complaint.** The board shall have power to complain to the Superior Court for the enforcement of its orders made under this section and for appropriate temporary relief or restraining order, and shall file in the court the original or certified copy of the entire record in the proceeding, and shall cause notice of such complaint to be served upon such person, and that court shall thereupon have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

9. Appeal. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may appeal such order to the Superior Court. The aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of such appeal, the court shall proceed in the same manner as in the case of complaint by the board under subsection 8, and shall have the same jurisdiction to grant to the aggrieved such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; and the findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall in like manner be conclusive.

10. Stay. The commencement of proceedings under subsection 8 or 9 shall not stay enforcement of the board's decision, but the reviewing court may order a stay upon such terms as it deems proper.

11. Procedure. The procedure upon judicial review shall be in accordance with rule 80B of the Maine Rules of Civil Procedure, except as otherwise indicated in this section.

STATEMENT OF FACT

The purpose of this bill is to clarify the Maine Agricultural Marketing and Bargaining Act.