

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1551

H. P. 1269

House of Representatives, March 30, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Michael of Auburn.

Cosponsors: Mr. Wyman of Pittsfield, Mr. Churchill of Orland and Mr. Soulas of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Establish a Maine Labor Relations Law.

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

26 MRSA c. 11-A is enacted to read:

CHAPTER 11-A

MAINE LABOR RELATIONS LAW

§ 1011. Purpose

It is declared to be the public policy of this State and it is the purpose of this chapter to render the bargaining position of certain private employees more equal to private employers and to promote the improvement of the relationship between private employers and their employees by providing a uniform basis for recognizing the right of private employees to joint labor organizations of their own choosing and to be represented by those organizations in collective bargaining for terms and conditions of employment.

§ 1012. Definitions

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

1. **Bargaining agent.** "Bargaining agent" shall mean any lawful organization, association or individual representative of that organization or association which exists, in whole or in part, for the purpose of the representation of employees in their employment relations with employers, and which has been determined by the employer or by the executive director of the board to be the choice of the majority of the unit as their representative.

2. **Board.** "Board" shall mean the Maine Labor Relations Board as defined in section 968, subsection 1.

3. **Employees.** "Employee" shall mean and include every person who may be permitted, required or directed by any employer in consideration of direct or indirect gain or profit to engage in any employment; and shall include any employee and shall not be limited to the employees of a particular employer, unless this chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, but shall not include any individual employed in the domestic service of any family or person at his house, or any individual employed by his parent or spouse, or any individual employed as a supervisor or any individual covered under the Municipal Public Employees Labor Relations Law, section 961, et seq., the State Employees Labor Relations Act, section 979, et seq., or the University of Maine Labor Relations Act, sections 1021, et seq. The term "employees" also shall not include individuals employed by employers with an annual gross business income of under \$150,000 or individuals employed by employers with an annual gross business income of under \$250,000 and employing less than 20 persons or individuals employed in agriculture, as defined in the Employment Security Law, chapter 13, except when that individual performs services for employers covered under the Maine minimum wage law, or services for employers managing, operating, controlling or having an ownership interest in over 4,000 acres of land.

4. **Employer.** "Employer" shall be liberally construed, shall include any entity exercising control over the terms and conditions of employment and shall include employers and employment units defined in the Employment Security Law.

5. **Executive director.** "Executive director" shall mean the Executive Director of the Maine Labor Relations Board.

6. **Labor organization.** "Labor organization" shall mean any organization of any kind, or any agency or employee representation, committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employees, concerning grievances, labor disputes, wages, rates of pay, hours or employment or conditions of work for employees.

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 engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.

§ 1014. Prohibited acts of the employer

It shall be an unfair labor practice for an employer to do any of the following:

1. Interference with employees' rights. To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 1013.

This right shall include the right of access by nonemployees to the premises of an employer, before, during and after working hours, for the purpose of organizing, subject to reasonable limitations which may be adopted by regulations of the board pursuant to section 1016;

2. Interference with labor organization. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. Subject to such rules and regulations as may be made and published by the board pursuant to section 1016, subsection 7, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

3. Discrimination in hiring or tenure. By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Nothing in this chapter or in any other statute of this State shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein on or after the 5th day following the beginning of the employment, or the effective date of the agreement, whichever is later, if the labor organization is the representative of the employees as provided in this chapter in the appropriate collective bargaining unit covered by the agreement;

4. Discrimination against employees filing affidavit or petition. To discharge or otherwise discriminate against an employee because he has signed or filed an affidavit or petition, or filed charges or given testimony under this chapter;

5. Refusal to bargain. To refuse to bargain collectively in good faith with a labor organization and their representatives who have been recognized or certified pursuant to section 1016, or, if none has been recognized or certified, with any labor organization which has demonstrated by any reasonable means it represents a majority of the employees;

6. Recognize collective bargaining agreement. To recognize, bargain with or sign a collective bargaining agreement with any labor organization not certified or demonstrating majority status, if none has been certified;

7. Refuse to reinstate employee. To refuse to reinstate an employee because of the employee's participation in a strike, unless the strike is prohibited by this chapter or is in violation of a collective bargaining agreement; or

8. Blacklisting. To blacklist any employee organization or its members for the purpose of denying them employment.

§ 1015. Prohibited acts of employees and employee organizations

It shall be an unfair labor practice for a labor organization or its agents to do the following:

1. Restraint on employees' rights or employer's selection of representative. To restrain or coerce employees in the exercise of the rights guaranteed in section 1013; provided that this subsection shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

2. Causing employer to discriminate against employees. To cause or attempt to cause an employer to discriminate against an employee in violation of section 1014, subsection 3, or to discriminate against an employee with respect to whom membership in the organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

3. Refusal to bargain. To refuse to bargain collectively in good faith with an employer, provided the bargaining agent is the representative of his employees, within the meaning of this chapter;

4. Strike or work stoppage. To engage in a strike or refuse in the course of employment to perform any services where the object thereof is to force or to require the employer to recognize or bargain with a labor organization, unless the labor organization has been certified as the representative of the employees, or to force or require any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class, unless the employer is failing to conform to an order or certification of the board determining the bargaining representative for employees performing the work; or

5. Picketing. To picket or cause to be picketed, any employer where an object thereof is either forcing or requiring an employer to recognize or bargain with the labor organization as a representative of his employees, or forcing or requiring the employees of the employer to accept or select the labor organization as their collective bargaining representative unless the labor organization is currently certified as the collective bargaining representative of the employees;

A. Where the employer has lawfully recognized in accordance with this chapter any other labor organization and a question concerning representation may not appropriately be raised under this chapter;

B. Where within the preceding 12 months a valid election under this chapter has been conducted; or

C. Where the picketing has been conducted without a petition under this chapter being filed within a reasonable time not to exceed 30 days after the commencement of the picketing.

Except as specifically provided in this chapter, and in the Constitution of the United States, the Constitution of Maine or the National Labor Relations Act, nothing herein shall be construed to limit or impair the right to engage in a strike, lockout, boycott, picket line or any other lawful concerted activity.

§ 1016. Obligation to bargain

1. Good faith bargaining. It shall be the obligation of the employer and bargaining agent to bargain collectively in good faith, to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but the obligation does not compel either party to agree to a proposal or require the making of a concession, provided that, where there is in effect a collective bargaining contract, the duty to bargain collectively shall also mean that no party to the contract shall terminate or modify the contract, unless the party desiring the termination or modification:

A. Serves a written notice upon the other party to the contract of proposed termination or modification 60 days prior to the expiration thereof or, in the event the contract contains no expiration date, 60 days prior to the time it is proposed to make the termination or modification;

B. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

C. Notifies the board within 15 days of the notice of the existence of a dispute, provided no agreement has been reached by that time; and

D. Continues in full force and effect all the terms and conditions of the existing contract for a period of 60 days after the notice is given or until the expiration date of the contract, whichever occurs later.

2. Length of contract. No contract entered into between the employer and the bargaining agent shall continue in force and effect for a period of more than 3 years.

3. Services of Panel of Mediators. The services of the Panel of Mediators of the State shall be made available in any dispute upon the request of a party, or at any time on motion of the Maine Labor Relations Board or its executive director if the board or executive director finds that the dispute is subject to settlement through mediation and that it is in the public interest to mediate.

4. **Prevention of unfair labor practices.** The board is empowered to prevent any person, employer, employee, employee organization or bargaining agent from engaging in any of the unfair labor practices enumerated in sections 1014 and 1015. To the extent the following are not inconsistent with the express purposes of this chapter, the board and such persons, employers, employees, employee organizations and bargaining agents shall have all the rights, powers and duties set forth in the Maine Municipal Public Employees Labor Relations Law, insofar as these rights, powers and duties relate to the determination of unfair labor practice complaints, determination of the bargaining unit, determination of the bargaining agent, rule-making power and the administrative and judicial hearing and appeal procedures, as set forth in sections 966 to 968 and the board and executive director shall have all the necessary and incidental authority to carry out the purposes and provisions. The members of the board, their designees or their duly authorized agents shall have the right of free access to all places of labor, when necessary to carry out the purposes of this chapter.

5. **Hearing on unfair labor practices; limitation.** The board shall hold no hearing based upon any alleged unfair labor practice occurring more than 12 months prior to the filing of the complaint with the executive director.

6. **Relief.** In addition to the foregoing, if after hearing any argument, upon the preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged or is engaging in an unfair labor practice, the board in it cease and desist order may make the employees whole for the loss of pay resulting from the employer's refusal to bargain, and to provide such other relief as will effectuate the policies of this chapter.

7. **Regulations.** The board shall enact regulations pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, and section 968 which are necessary to carry out the purposes of this chapter. The board may adopt without the necessity of complying with the hearing or other requirements of the Maine Administrative Procedure Act any regulation previously promulgated under the Municipal Public Employees Labor Relations Law, if that regulation is sufficient to carry out the purposes of this chapter.

8. **Provisions.** The board's regulations shall include provisions insuring that in any given industry there shall be afforded an opportunity for an adequate election to be held, and that, in seasonal occupations, the election be held during the seasonal employment period and as closely as practicable to the peak employment period. The regulations shall also provide in seasonal occupations that the secret ballot elections shall be conducted no longer than 5 days after the filing of the petition of the employees that they desire to be represented by an organization; that if, at the time the petition is filed, a majority of the employees in a bargaining unit are engaged in a strike, or it appears to the board that such a strike is threatened, the board shall with all due diligence attempt to hold a secret ballot election within 48 hours of the filing of the petition; that the holding of elections under strike circumstances shall take precedence over the holding of

other secret ballot elections; that unless the board determines that there are sufficient grounds to deny certification under this chapter or under its regulations, it shall forthwith certify the election; that, within 5 days of the election, any interested party may file a petition with the board reviewing the board's decision to certify or not to certify the election on the basis of the conduct of the election or conduct affecting the result of the election or the determination of the bargaining unit; that the board shall forthwith upon due notice hold a hearing to determine if it shall affirm, reverse or modify its decision to certify or not to certify the election; and that the board's initial decision to certify or not to certify the election shall remain in full force and effect pending a final decision of the board at the review hearing.

STATEMENT OF FACT

The purpose of this bill is reflected in the first section of the bill under purpose.