

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1810
6

7 H.P. 1385

House of Representatives, January 3, 1984

8 Approved for introduction by the Legislative Council pursuant to Joint
9 Rule 26.

10 Reference to the Committee on Labor is suggested. Ordered printed and
sent up for concurrence.

EDWIN H. PERT, Clerk

11 Presented by Representative Beaulieu of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Establish a Maine
18 Labor Relations Law.
19

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

22 26 MRSA, c. 11-A is enacted to read:

23 CHAPTER 11-A

24 MAINE LABOR RELATIONS ACT

25 §1013. Purpose

26 It is declared to be the public policy of this
27 State and it is the purpose of this chapter to render
28 the bargaining position of certain private employees
29 more equal to private employers and to promote the
30 improvement of the relationship between private em-
31 ployers and their employees by providing a uniform
32 basis for recognizing the right of private employees

1 to join labor organizations of their own choosing and
2 to be represented by the organizations in collective
3 bargaining for terms and conditions of employment.

4 §1014. Definitions

5 As used in this chapter, unless the context indi-
6 cates otherwise, the following terms have the follow-
7 ing meanings.

8 1. Bargaining agent. "Bargaining agent" means
9 any lawful organization, association or individual
10 representative of the organization or association
11 which exists, in whole or in part, for the purpose of
12 the representation of employees in their employment
13 relations with employers, and which has been deter-
14 mined by the employer or by the executive director of
15 the board to be the choice of the majority of the
16 unit as their representative.

17 2. Board. "Board" means the Maine Labor Rela-
18 tions Board, as defined in section 968, subsection 1.

19 3. Employees. "Employee" means and includes ev-
20 ery person who may be permitted, required or directed
21 by any employer in consideration of direct or indi-
22 rect gain or profit to engage in any employment; in-
23 cludes any employee and is not limited to the employ-
24 ees of a particular employer, unless this subchapter
25 explicitly states otherwise; and includes any indi-
26 vidual whose work has ceased as a consequence of, or
27 in connection with, any current labor dispute or be-
28 cause of any unfair labor practice, but does not in-
29 clude any individual employed in the domestic service
30 of any family or person at his house, any individual
31 employed by his parent or spouse, any individual em-
32 ployed as a supervisor or any individual covered un-
33 der the Municipal Public Employees Labor Relations
34 Law, chapter 9-A, the State Employees Labor Relations
35 Act, chapter 9-B, or the University of Maine Labor
36 Relations Act, chapter 12. The term "employees" also
37 does not include individuals employed by employers
38 having an annual gross business income under \$100,000
39 or individuals employed in agriculture, as defined in
40 the Maine Employment Security Law, except when that
41 individual performs services for employers covered
42 under the Maine minimum wage law, or services for em-

1 ployers managing, operating, controlling or having
2 ownership interest in over 4,000 acres of land.

3 4. Employer. "Employer" shall be liberally con-
4 strued and includes any entity exercising control
5 over the terms and conditions of employment and in-
6 cludes employers and employment units, as defined in
7 the Maine Employment Security Law.

8 5. Executive director. "Executive director"
9 means the Executive Director of the Maine Labor Rela-
10 tions Board.

11 6. Labor organization. "Labor organization"
12 means any organization of any kind, or any agency or
13 employee representation committee or plan, in which
14 employees participate and which exists, in whole or
15 in part, for the purpose of dealing with employees
16 concerning grievances, labor disputes, wages, rates
17 of pay, hours of employment or conditions of work for
18 employees.

19 §1015. Rights of employees

20 Employees shall have the right to self-
21 organization, to form, join or assist labor organiza-
22 tions, bargain collectively through representatives
23 of their own choosing and engage in other concerted
24 activities for the purpose of collective bargaining
25 or other mutual aid or protection. Employees shall
26 also have the right to refrain from any or all activ-
27 ities, except to the extent that that right may be
28 affected by an agreement requiring membership in a
29 labor organization as a condition of employment.

30 §1016. Prohibited acts of the employer

31 It is an unfair labor practice for an employer to
32 do any of the following:

33 1. Interference with employees' rights. To in-
34 terfere with, restrain or coerce employees in the ex-
35 ercise of the rights guaranteed in section 1015;

36 This right shall include the right of access by
37 nonemployees to the premises of an employer, before,
38 during and after working hours, for the purpose of

1 organizing, subject to reasonable limitations which
2 may be adopted by regulations of the board, pursuant
3 to section 1018;

4 2. Interference with labor organization. To
5 dominate or interfere with the formation or adminis-
6 tration of any labor organization or contribute fi-
7 ancial or other support to it. Subject to such
8 rules, as may be made and published by the board,
9 pursuant to section 1018, subsection 7, an employer
10 is not prohibited from permitting employees to confer
11 with him during working hours without loss of time or
12 pay;

13 3. Discrimination in hiring or tenure. By dis-
14 crimination, in regard to hire or tenure of employ-
15 ment or any term or condition of employment, to en-
16 courage or discourage membership in any labor organi-
17 zation. Nothing in this Part or in any other law of
18 this State may preclude an employer from making an
19 agreement with a labor organization to require as a
20 condition of employment membership therein on or af-
21 ter the 5th day following the beginning of that em-
22 ployment, or the effective day of the agreement,
23 whichever is later, if the labor organization is the
24 representative of the employees, as provided in this
25 chapter, in the appropriate collective bargaining
26 unit covered by that agreement;

27 4. Discrimination against employees filing affi-
28 davit or petition. To discharge or otherwise dis-
29 criminate against an employee because he has signed
30 or filed an affidavit or petition, or filed charges
31 or given testimony under this Part;

32 5. Refusal to bargain. To refuse to bargain
33 collectively in good faith with a labor organization
34 and their representatives who have been recognized or
35 certified, pursuant to this section, or, if none has
36 been recognized or certified, with any labor organi-
37 zation which has demonstrated by any reasonable means
38 it represents a majority of the employees;

39 6. Recognize collective bargaining agree-
40 ment. To recognize, bargain with or sign a collec-
41 tive bargaining agreement with any labor organization
42 not certified or demonstrating majority status, if
43 none has been certified;

1 7. Refuse to reinstate employee. To refuse to
2 reinstate an employee because of the employee's partic-
3 ipation in a strike, unless the strike is prohib-
4 ited by this chapter or is in violation of a collec-
5 tive bargaining agreement; or

6 8. Blacklisting. To blacklist any employee or-
7 ganization or its members for the purpose of denying
8 them employment.

9 §1017. Prohibited acts of employees and employee or-
10 ganizations

11 It is an unfair labor practice for a labor orga-
12 nization or its agents to do the following:

13 1. Restraint on employees' rights or employer's
14 selection of representative. To restrain or coerce:

15 A. Employees in the exercise of the rights guar-
16 anteed in section 1015, provided that this sub-
17 section does not impair the right of a labor or-
18 ganization to prescribe its own rules with re-
19 spect to the acquisition or retention of member-
20 ship therein; or

21 B. An employer in the selection of his represen-
22 tative for the purposes of collective bargaining
23 or the adjustment of grievances;

24 2. Causing employers to discriminate against em-
25 ployees. To cause or attempt to cause an employer to
26 discriminate against an employee in violation of sec-
27 tion 1016, subsection 3, or to discriminate against
28 an employee with respect to whom membership in that
29 organization has been denied or terminated on some
30 ground other than his failure to tender the periodic
31 dues and the initiation fees uniformly required as a
32 condition of acquiring or retaining membership;

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

37 4. Strike or work stoppage. To engage in a
38 strike or refuse in the course of employment to per-

1 form any services where the object thereof is to
2 force or to require the employer to recognize or bar-
3 gain with a labor organization, unless that labor or-
4 ganization has been certified as the representative
5 of the employees, or to force or require any employer
6 to assign particular work to employees in a particu-
7 lar labor organization or in a particular trade,
8 craft or class, unless that employer is failing to
9 conform to an order or certification of the board de-
10 termining the bargaining representative for employees
11 performing that work.

12 5. Picketing. To picket or cause to be
13 picketed, any employer where an object thereof is ei-
14 ther forcing or requiring an employer to recognize or
15 bargain with the labor organization as a representa-
16 tive of his employees, or forcing or requiring the
17 employees of the employer to accept or select such
18 labor organization as their collective bargaining
19 representative, unless that labor organization is
20 currently certified as the collective bargaining rep-
21 resentative of the employees:

22 A. Where the employer has lawfully recognized in
23 accordance with this chapter any other labor or-
24 ganization and a question concerning representa-
25 tion may not appropriately be raised under this
26 chapter;

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

29 C. Where the picketing has been conducted with-
30 out a petition under the act being filed within a
31 reasonable time not to exceed 30 days after the
32 commencement of that picketing; or

33 6. Construction; not to limit lawful concerted
34 activity. Except as specifically provided in this
35 chapter, in the Constitution of the United States,
36 the Constitution of Maine or the National Labor Rela-
37 tions Act, nothing in this chapter may be construed
38 to limit or impair the right to engage in a strike,
39 lockout, boycott, picket line or any other lawful
40 concerted activity;

41 §1018. Obligation to bargain

1 1. Good faith bargaining. It is the obligation
2 of the employer and bargaining agent to bargain col-
3 lectively in good faith, to meet at reasonable times
4 and confer in good faith with respect to wages, hours
5 and other terms and conditions of employment, or the
6 negotiation of an agreement or any questions arising
7 thereunder, and the execution of a written contract
8 incorporating any agreement reached if requested by
9 either party, but the obligation does not compel ei-
10 ther party to agree to a proposal or require the mak-
11 ing of a concession, provided that, where there is in
12 effect a collective bargaining contract, the duty to
13 bargain collectively shall also mean that no party to
14 that contract may terminate or modify that contract,
15 unless the party desiring the termination or modifi-
16 cation:

17 A. Serves a written notice upon the other party
18 to the contract of proposed termination or modi-
19 fication 60 days prior to the expiration thereof,
20 or in the event that contract contains no expira-
21 tion date, 60 days prior to the time it is pro-
22 posed to make the termination or modification;

23 B. Offers to meet and confer with the other par-
24 ty for the purpose of negotiating a new contract
25 or a contract containing the proposed modifica-
26 tions;

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

30 D. Continues in full force and effect all the
31 terms and conditions of the existing contract for
32 a period of 60 days after the notice is given or
33 until the expiration date of the contract, which-
34 ever occurs later.

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

39 3. Services of Panel of Mediators. The services
40 of the Panel of Mediators is made available in any
41 dispute upon the request of a party, or at any time

1 on motion of the Maine Labor Relations Board or its
2 executive director if the board or executive director
3 finds that the dispute is subject to settlement
4 through mediation and that it is in the public inter-
5 est to mediate.

6 4. Prevention of unfair labor practices. The
7 board may prevent any person, employer, employee, em-
8 ployee organization or bargaining agent from engaging
9 in any of the unfair labor practices enumerated in
10 sections 1016 and 1017. To the extent the following
11 are not inconsistent with the express purposes of
12 this chapter, the board and the persons, employers,
13 employees, employee organizations and bargaining
14 agents shall have all the rights, powers, duties and
15 privileges set forth in the Municipal Public Employ-
16 ees Labor Relations Law, insofar as these rights,
17 powers and duties relate to the determination of un-
18 fair labor practice complaints, determination of the
19 bargaining unit, determination of the bargaining
20 agent, rule-making power and the administrative and
21 judicial hearing and appeal procedures, as set forth
22 in sections 966 to 968 and the board and executive
23 director shall have all the necessary and incidental
24 authority to carry out the purposes and provisions.
25 The members of the board, or their designees, or
26 their duly authorized agents shall have the right of
27 free access to all places of labor, when necessary to
28 carry out the purposes of this chapter.

29 5. Hearing on unfair labor practices; limita-
30 tions. The board shall hold no hearing based upon
31 any alleged unfair labor practice occurring more than
32 12 months prior to the filing of the complaint with
33 the executive director.

34 6. Relief. In addition, if, after hearing and
35 argument upon the preponderance of the evidence re-
36 ceived, the board is of the opinion that any party
37 named in the complaint has engaged or is engaging in
38 an unfair labor practice, the board in its cease and
39 desist order may make the employees whole for the
40 loss of pay resulting from the employer's refusal to
41 bargain and to provide such other relief as will ef-
42 fectuate the policies of this chapter.

1 7. Regulations. The board shall enact regula-
2 tions pursuant to the Maine Administrative Procedure
3 Act, Title 5, chapter 375, and section 968, which are
4 necessary to carry out the purposes of this chapter.
5 The board may adopt any regulation previously promul-
6 gated under the Municipal Public Employees Labor Re-
7 lations Law, if that regulation is sufficient to car-
8 ry out the purposes of this chapter.

9 8. Provisions. The board's regulations shall
10 include provisions insuring that in any given indus-
11 try there shall be afforded an opportunity for an ad-
12 equate election to be held, and that, in seasonal oc-
13 cupations, the election be held during the seasonal
14 employment period and as closely as practicable to
15 the peak employment period. The regulations shall
16 also provide in seasonal occupations that the secret
17 ballot elections shall be conducted no longer than 10
18 days after the filing of the petition of the employ-
19 ees that they desire to be represented by an organi-
20 zation; that if, at the time the petition is filed, a
21 majority of the employees in a bargaining unit are
22 engaged in a strike, or it appears to the executive
23 director that such a strike is threatened, the execu-
24 tive director shall with all due diligence attempt to
25 hold a secret ballot election within 48 hours of the
26 filing of the petition; that the holding of elections
27 under strike circumstances shall take precedence over
28 the holding of other secret ballot elections if
29 deemed necessary; that unless the executive director
30 determines that there are sufficient grounds to deny
31 certification under this chapter or under its regula-
32 tions, it shall forthwith certify the election; that,
33 within 10 days of the election, any interested party
34 may file a petition with the board reviewing the ex-
35 ecutive director's decision to certify or not to cer-
36 tify the election on the basis of the conduct of the
37 election or conduct affecting the result of the elec-
38 tion or the determination of the bargaining unit;
39 that the board shall forthwith upon due notice hold a
40 hearing to determine if it shall affirm, reverse or
41 modify its decision to certify or not to certify the
42 election; and that the executive director's initial
43 decision to certify or not to certify the election
44 shall remain in full force and effect pending a final
45 decision of the board at the review hearing.

1 The board shall issue a decision no later than 15
2 days following the certification or denial of certi-
3 fication. The actions of the executive director, un-
4 der this section, shall not be subject to review, ex-
5 cept upon petition to the board following certifica-
6 tion or denial of certification.

7 STATEMENT OF FACT

8 The purpose of this bill is to render the bar-
9 gaining position of certain private employees more
10 equal to private employers and to promote the im-
11 provement of the relationship between private employ-
12 ers and their employees by providing a uniform basis
13 for recognizing the right of private employees to
14 join labor organizations of their choosing and to be
15 represented by the organization in the collective
16 bargaining process.

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