

# MAINE STATE LEGISLATURE

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(After Deadline)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2196

H.P. 1663

House of Representatives, March 7, 1984

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Referred to the Committee on Labor is suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Beaulieu of Portland.

STATE OF MAINE

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

AN ACT Providing for 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 ACT

§1013. 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 em-

1 ployers and their employees by providing a uniform  
2 basis for recognizing the right of private employees  
3 to join labor organizations of their own choosing and  
4 to be represented by the organizations in collective  
5 bargaining for terms and conditions of employment.

6 §1014. Definitions

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

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

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

21 3. Employee. "Employee" means and includes ev-  
22 ery person who may be permitted, required or directed  
23 by any employer in consideration of direct or indi-  
24 rect gain or profit to engage in any employment; in-  
25 cludes any employee and is not limited to the employ-  
26 ees of a particular employer, unless this chapter ex-  
27 PLICITLY states otherwise; and includes any individu-  
28 al whose work has ceased as a consequence of, or in  
29 connection with, any current labor dispute or because  
30 of any unfair labor practice. The term employee does  
31 not include any individual employed in the domestic  
32 service of any family or person at his house, any in-  
33 dividual employed by his parent or spouse, any indi-  
34 vidual employed as a supervisor, independent contrac-  
35 tor or any individual covered under the Municipal  
36 Public Employees Labor Relations Law, chapter 9-A;  
37 the State Employees Labor Relations Act, chapter 9-B;  
38 or the University of Maine Labor Relations Act, chap-  
39 ter 12. The term "employees" also does not include  
40 individuals employed by employers having an annual  
41 gross business income under \$100,000 or individuals  
42 employed in agriculture, as defined in the Maine Em-

1 ployment Security Law, except when that individual  
2 performs services for employers covered under the  
3 Maine minimum wage law, or services for employers  
4 managing, operating, controlling or having ownership  
5 interest in over 4,000 acres of land.

6 4. Employer. "Employer" shall be liberally con-  
7 strued and includes any entity exercising control  
8 over the terms and conditions of employment and in-  
9 cludes employers and employment units, including, but  
10 not limited to, those defined in the Maine Employment  
11 Security Law, and over which the National Labor Rela-  
12 tions Board has declined to exercise jurisdiction.

13 5. Executive director. "Executive director"  
14 means the Executive Director of the Maine Labor Rela-  
15 tions Board.

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

24 7. Supervisor. "Supervisor" shall be defined in  
25 the same manner as under the federal Labor Management  
26 Relations Act of 1947.

27 §1015. Rights of employees

28 Employees have the right to self-organization, to  
29 form, join or assist labor organizations, bargain  
30 collectively through representatives of their own  
31 choosing and engage in other concerted activities for  
32 the purpose of collective bargaining or other mutual  
33 aid or protection. Employees also have the right to  
34 refrain from any or all activities, except to the ex-  
35 tent that that right may be affected by an agreement  
36 requiring membership in a labor organization as a  
37 condition of employment.

38 §1016. Prohibited acts of the employer

39 It is an unfair labor practice for an employer to  
40 do any of the following:

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

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 nanacial or other support to it. Subject to such  
8 rules, as may be made and published by the board pur-  
9 suant to section 1018, subsection 7, an employer is  
10 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 chapter or in any other law  
18 of 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 30th 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 chapter;

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;

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

1           7. Solicitation. To solicit persons to replace  
2 employees or fill positions made vacant as the result  
3 of a strike, lockout or other labor dispute, by means  
4 of advertisement, posters, oral or other communica-  
5 tion or otherwise, unless the solicitations state  
6 plainly and specifically that a strike, lockout or  
7 other labor dispute exists; or

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

11           §1017. Prohibited acts of employees and employee or-  
12 ganizations

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

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

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

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

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

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

1           4. Strike or work stoppage. To engage in a  
2 strike or refuse in the course of employment to per-  
3 form any services where the object thereof is to  
4 force or to require the employer to recognize or bar-  
5 gain with a labor organization, unless that labor or-  
6 ganization has been certified or recognized as the  
7 representative of the employees, or to force or re-  
8 quire any employer to assign particular work to em-  
9 ployees in a particular labor organization or in a  
10 particular trade, craft or class, unless that employ-  
11 er is failing to conform to an order or certification  
12 of the board determining the bargaining representa-  
13 tive for employees performing that work;

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

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

29           B. When, within the preceding 12 months, a valid  
30 election under the chapter has been conducted; or

31           C. When the picketing has been conducted without  
32 a petition under the Act being filed within a  
33 reasonable time not to exceed 30 days after the  
34 commencement of that picketing; or

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

1       §1018. Obligation to bargain

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

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

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

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

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

36           2. Engaging in strike. Any employee who engages  
37 in a strike within the 60-day period specified in  
38 subsection 1 shall lose his status as an employee for  
39 the employer engaged in a particular labor dispute,  
40 for the purposes of this chapter, but such a loss of  
41 status for the employee shall terminate if the em-  
42 ployee is reemployed by the employer.



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

5           4. Services of Panel of Mediators. The services  
6 of the Panel of Mediators is made available in any  
7 dispute upon the request of a party, or at any time  
8 on motion of the Maine Labor Relations Board or its  
9 executive director if the board or executive director  
10 finds that the dispute is subject to settlement  
11 through mediation and that it is in the public inter-  
12 est to mediate.

13 §1019. Determination of bargaining agent

14           The applicable provisions of sections 966 and 967  
15 shall cover determinations and elections under this  
16 chapter. The provisions of section 968, subsection  
17 4, shall cover the review of representative proceed-  
18 ings.

19           Nothing in this section may be construed as lim-  
20 iting the provisions for unit determinations, elec-  
21 tions and representations respecting seasonal occupa-  
22 tions under section 1021 or rules adopted by the  
23 board under that section.

24 §1020. Prevention of unfair labor practices; hear-  
25 ings; relief

26           1. Prevention of unfair labor practices. The  
27 board may prevent any person, employer, employee, em-  
28 ployee organization or bargaining agent from engaging  
29 in any of the unfair labor practices enumerated in  
30 sections 1016 and 1017. This power shall not be af-  
31 ected by any other means of adjustment or prevention  
32 that has been or may be established by agreement, law  
33 or otherwise. Section 968, subsections 5, 6 and 7,  
34 shall apply to any person, employer, employee, em-  
35 ployee organization or bargaining agent and this  
36 chapter to the same extent and in the same manner the  
37 section and paragraphs apply to persons, public em-  
38 ployers, public employees, public employee organiza-  
39 tions and bargaining agents under chapter 9-A.

1        2. Hearing on unfair labor practices; limita-  
2        tions. The board shall hold no hearing based upon  
3        any alleged unfair labor practice occurring more than  
4        12 months prior to the filing of the complaint with  
5        the executive director.

6        3. Relief. In addition, if, after hearing and  
7        argument upon the preponderance of the evidence re-  
8        ceived, the board is of the opinion that any party  
9        named in the complaint has engaged or is engaging in  
10       an unfair labor practice, the board in its cease and  
11       desist order may make the employees whole for the  
12       loss of pay resulting from the employer's refusal to  
13       bargain and to provide such other relief as will ef-  
14       fectuate the policies of this chapter.

15       §1021. Regulations; elections; seasonal occupations

16       1. Regulations. The board shall enact regula-  
17       tions pursuant to the Maine Administrative Procedure  
18       Act, Title 5, chapter 375, and section 968, which are  
19       necessary to carry out the purposes of this chapter,  
20       including the resolution of unit questions in season-  
21       al occupations. The board may adopt any regulation  
22       previously promulgated under the Municipal Public Em-  
23       ployees Labor Relations Law, if that regulation is  
24       sufficient to carry out the purposes of this chapter.

25       2. Provisions. The board's regulations shall  
26       include provisions insuring that in any given indus-  
27       try there shall be afforded an opportunity for an ad-  
28       equiate election to be held and that, in seasonal oc-  
29       cupations, the election be held during the seasonal  
30       employment period and as closely as practicable to  
31       the peak employment period. The regulations shall  
32       also provide in seasonal occupations that the secret  
33       ballot elections shall be conducted no longer than 15  
34       days after the filing of the petition of the employ-  
35       ees that they desire to be represented by an organi-  
36       zation; that if, at the time the petition is filed, a  
37       majority of the employees in a bargaining unit are  
38       engaged in a strike, or it appears to the executive  
39       director that such a strike is threatened, the execu-  
40       tive director shall with all due diligence attempt to  
41       hold a secret ballot election within 48 hours of the  
42       filing of the petition; that the holding of elections  
43       under strike circumstances shall take precedence over

1 the holding of other secret ballot elections if  
2 deemed necessary; that, unless the executive director  
3 determines that there are sufficient grounds to deny  
4 certification under this chapter or under the board's  
5 regulations, he shall forthwith certify the election;  
6 that, within 5 days of the election, any interested  
7 party may file a petition with the board reviewing  
8 the executive director's decision to certify or not  
9 to certify the election on the basis of the conduct  
10 of the election or conduct affecting the result of  
11 the election or the determination of the bargaining  
12 unit; that the board shall forthwith upon due notice  
13 hold a hearing to determine if it shall affirm, re-  
14 verse or modify its decision to certify or not to  
15 certify the election; and that the executive direc-  
16 tor's initial decision to certify or not to certify  
17 the election shall remain in full force and effect  
18 pending a final decision of the board at the review  
19 hearing.

20 The board shall issue a decision no later than 15  
21 days following the certification or denial of certi-  
22 fication. The actions of the executive director, un-  
23 der this section, shall not be subject to review, ex-  
24 cept upon petition to the board following certifica-  
25 tion or denial of certification.

26 STATEMENT OF FACT

27 The purpose of this new draft is to render the  
28 bargaining position of certain private employees more  
29 equal to private employers and to promote the im-  
30 provement of the relationship between private employ-  
31 ers and their employees by providing a uniform basis  
32 for recognizing the right of private employees to  
33 join labor organizations of their choosing and to be  
34 represented by the organization in the collective  
35 bargaining process.

36 The new draft is modeled on the National Labor  
37 Relations Act and other state's private employee  
38 acts. It would cover only those employees who work  
39 for a private employer who is not covered by the na-

1 tional act because the National Labor Relations Board  
2 has declined to exercise jurisdiction.

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